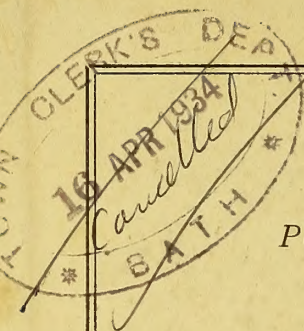


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VOL. I.

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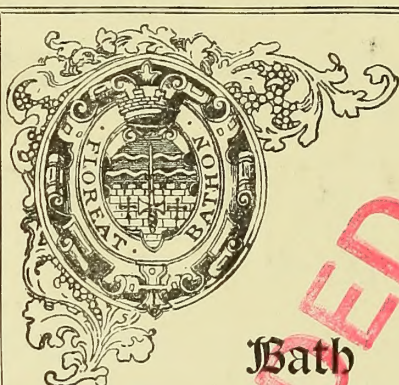


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THE
PUBLIC HEALTH ACTS,
ANNOTATED,
WITH APPENDICES,
CONTAINING THE
VARIOUS INCORPORATED STATUTES
AND
ORDERS OF THE LOCAL GOVERNMENT BOARD,
ETC.

FIRST EDITION, PUBLIC HEALTH ACT, 1875.

BY

W. G. LUMLEY, Esq., LL.M., Q.C., Counsel to the Local Government Board; and
EDMUND LUMLEY, B.A., of the Middle Temple, Barrister-at-Law.

Fifth Edition,
IN TWO VOLUMES,

BY

ALEXANDER MACMORRAN, M.A.,
One of Her Majesty's Counsel,

AND

S. G. LUSHINGTON, M.A., B.C.L.,
Of the Inner Temple, Barrister-at-Law.

VOL. I.
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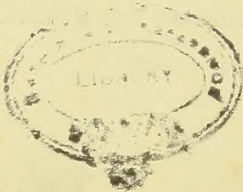
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PREFACE TO THE FIFTH EDITION.

THE Fourth Edition of LUMLEY'S Public Health was published in February, 1893, and since that date there has been much legislation affecting sanitary matters.

In December, 1893, was passed the important Statute for generalising and amending statutory provisions for the protection of persons acting in the execution of statutory and other public duties, known as the Public Authorities Protection Act, 1893. Sanitary Authorities can, amongst others, avail themselves of the protection afforded by this Act, which supersedes section 264 of the Public Health Act, 1875.

In 1894, the constitution of Rural Sanitary Authorities and of Urban Sanitary Authorities for districts not being Municipal Boroughs was entirely remodelled and the functions of those bodies considerably enlarged by a Statute of the first importance, viz., the Local Government Act, 1894. In the same year also, a useful amendment of certain provisions of the Housing of the Working Classes Act, 1890, as to the borrowing powers of local authorities under that Act, was effected by another Act.

In 1895, a short Act was passed to amend the Local Government Act, 1894, so far as regards the transfer of stock standing in the name of a local authority.

In addition to these Statutes there has been a great deal of legislation indirectly affecting Sanitary Authorities, as, for instance, the Isolation Hospitals Act, 1893; certain portions of the Merchant Shipping Act, 1894; and certain portions of the Factory and Workshop Act, 1895; and other Statutes. The Public Libraries Act, 1892, and the Rivers Pollution Prevention Act, 1876, were amended in 1893; the Shop Hours Act, 1892, was amended in 1893, and again in 1895; and the Lands Clauses Consolidation Act, 1845, was also amended in 1895.

Moreover, a very large number of Cases have been decided since the issue of the last Edition upon points arising under the old as well as under the new Statutes.

The Editors have accordingly endeavoured, to the best of their ability, to bring the present Edition up to date in respect of all these particulars. They have also carefully revised the matter contained in the last Edition, and have re-arranged and made more complete the collection of Orders of the Local Government Board in Appendix II., which was a new feature of the last Edition. The result has inevitably been to increase the size of the Work ; but in order, as far as possible, to obviate the inconvenience of this, it has been decided to divide it into two volumes, relegating the Appendices to the second volume, but inserting a copy of the General Index in each volume.

The General Index, for which the Editors are indebted to the assistance of Mr. A. E. WOOD, has been entirely reconstructed in a most careful and exhaustive manner, and will, it is hoped, greatly facilitate reference to all parts of the Work, and increase its value in the hands of all who may have occasion to consult it.

A new feature of the present Edition is a Table of the Statutes referred to in the notes.

The Editors desire to acknowledge their obligation to the Work on the "Local Government Act, 1894," by MACMORRAN and DILL, whose notes in some cases have been adopted without alteration.

A. M.

S. G. L.

TEMPLE GARDENS, TEMPLE, E.C.

April, 1896.



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(38 & 39 VICT. CAP. 55.)

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N.B.—Pages above 779 refer to Vol. II.

CASES DECIDED WHILST THE WORK WAS GOING THROUGH THE PRESS.

Page 18, line 2—At end of paragraph add “See also *Lavy v. London County Council* [1895], 2 Q. B. 577; 64 L. J. M. C. 262; 73 L. T. (N.S.) 106; 43 W. R. 677; 59 J. P. 630; 11 T. L. R. 525.”

Page 48, line 31—After references on appeal in *Spokes v. Banbury Local Board*, add “And see *Attorney-General v. Walthamstow Urban District Council*, 11 T. L. R. 533.”

Page 51, line 26—After references to *Gill v. Edowin*, add “Affirmed in Court of Appeal, 72 L. T. (N.S.) 579; 11 T. L. R. 378.”

Page 90, line 24—After *Holmfirth Local Board v. Shore*, add reference to 59 J. P. 344.

Page 112, line 2, and page 119, line 3—After references to *Reg. v. Mead, Ex parte Gates*, add “And see *Reg. v. Wyndham Slade*, ‘The Times,’ January 13, 1896.”

Page 135, note (e)—Add “Before taking proceedings it is not necessary for the local authority to serve notice under section 94, *ante*, p. 115, requiring the abatement of the nuisance. *Bird v. St. Mary Abbots, Kensington (Vestry of)* [1895], 1 Q. B. 912; 64 L. J. M. C. 215; 72 L. T. (N.S.) 599; 59 J. P. 391.”

Page 150, note (d)—After references to *Tod Heatley v. Benham*, add “In *Pembroke (Earl of) v. Warren* [1895], 1 I. R. 76, it was held (FITZGIBBON, L.J., *diss.*), that the establishment of a private hospital for medical and surgical cases, but not for infectious cases, in a house in Fitzwilliam Square, Dublin, was a breach of a covenant against using the house for certain specified businesses, or any other offensive or noisy trade, business, or profession whatsoever.”

Page 158, line 2 from bottom—Add “And see *Municipal Council of Sydney v. Bourke* [1895], A. C. 433; 64 L. J. P. C. 140; 72 L. T. (N.S.) 605; 59 J. P. 659; 11 T. L. R. 402.”

Page 160, line 12 from bottom—After “on p. 531,” add, “And see *Municipal Council of Sydney v. Bourke, ante*, p. 158.”

Page 172, line 40—After references to *Bold v. Williams*, add “See also as to raising a highway so as to obstruct the access to a house, the whole of the land having subsided through brine-pumping, *Atherton v. Cheshire County Council*, 60 J. P. 6.”

Page 179, line 25—After *Barry and Cadoxton Local Board v. Parry* add references to [1895], 2 Q. B. 110; 64 L. J. Q. B. 512; 72 L. T. (N.S.) 692; 43 W. R. 504; 59 J. P. 521.

Page 214, line 7—After references to *Payne v. Wright*, insert “And see *Badley v. Cuckfield Rural District Council*, 64 L. J. Q. B. 571; 72 L. T. (N.S.) 775; 43 W. R.

663 ; 59 J. P. 582, where it was held that a building consisting of a wooden framework covered with a skin of galvanized iron lined with felt and matchboarding was not constructed of incombustible materials."

Page 215, line 23 from bottom—At end of note (f) add "And see *Southend (Mayor, &c., of) v. Ramuz*, 99 L. T. Newsp. 358 ; 'The Times,' August 6, 1895."

Page 240 last line—At end of note (a), add "These cases were followed in *Athy Guardians v. Murphy* [1895], 1 I. R. 65, where at a meeting of a dispensary committee, an agreement in writing for the purchase by them, as agents for the guardians, from the defendant of a plot of land for a doctor's residence and dispensary, was signed by the defendant and by the chairman on behalf of the committee, but the committee had at the time no authority from the guardians, and the defendant subsequently withdrew his offer and refused to carry out the agreement. After such withdrawal and refusal the agreement was approved by the guardians, but neither the approval nor the agreement itself was under seal. And it was held that the guardians were not entitled to a decree of specific performance of the agreement."

Page 242, line 3 from bottom—At end of note (d), add "A contract without a penalty clause is void." *British Insulated Wire Company v. Prescott Urban District Council* [1895], 2 Q. B. 468 ; 64 L. J. Q. B. 811 ; 73 L. T. (N.S.) 383 ; 59 J. P. 552 ; 11 T. L. R. 557 ; and see S. C. on appeal [1895], 2 Q. B. 538 ; 65 L. J. Q. B. 190 ; 11 T. L. R. 595.

Page 263, line 2—After references to *Reg. v. Burrows* add "And see *Reg. v. Wells*, 43 W. R. 576 ; 11 T. L. R. 458."

Page 284, line 11 from bottom—After references to *Art Union of London v. Savoy (Overseers of)* add, "and *Royal Agricultural Society of England v. St. George's, Hanover Square (Vestry of)*, 39 Sol. Journ. 557."

Page 307—At end of note to section 227, add. But see *Manly v. Young* [1896], 2 I. R. 126, where it was held that a rate made by town commissioners acting under a special Act who were also the sanitary authority for the township, and made the rate not only for strictly sanitary purposes, but also for all the purposes of the special Act, which incorporated the Towns Improvement (Ireland) Act, the Gas Works Clauses Act, 1847, and certain provisions of the Waterworks Clauses Act, 1847, and provided that the township rate should not exceed in any year two shillings in the pound, without the consent of two-thirds of the ratepayers at a special general meeting, was invalid, because not made with such consent, notwithstanding section 227 of the Public Health (Ireland) Act, 1878.

Page 347, line 6 from bottom—After references to *Reg. v. Spalding or Spedding*, add, "And see *Reg. v. Budden*, 60 J. P. 166."

Page 368, line 28—After *Midland Railway Company v. Edmonton Guardians*, insert references [1895], A. C. 485 ; 64 L. J. Q. B. 710 ; 72 L. T. (N.S.) 811 ; 60 J. P. 68 ; 11 T. L. R. 448," in H. L. affirming the decision of C. A. at the references stated in the text.

Page 491, line 25—After "within the meaning of the text" add "See also *London (Mayor, &c., of) v. Barnes*, 12 T. L. R. 135."

At the end of note (f) add "See also *In re Burslem (Mayor, &c., of) and Staffordshire County Council* [1896], 1 Q. B. 24 ; 65 L. J. Q. B. 1 ; 73 L. T. (N.S.) 651 ; 59 J. P. 772 ; 12 T. L. R. 48."

Page 508, line 12—After references to *Re Salop County Council*, insert "*Ex parte Kent County Council* [1895], 1 Q. B. 725."

Page 524, fourth line of note (c)—After reference to *Taylor v. Goodwin*, insert "So also under 24 & 25 Vict. c. 100, s. 35. *Reg. v. Parker*, 59 J. P. 793."

Page 579, line 8—At end of note to section 23 (2) of the Public Health Acts Amendment Act, 1890, add "The necessity for this clause is well illustrated by the case of *Fulham Vestry v. Solomon* [1896], 1 Q. B. 198 ; 65 L. J. M. C. 33 ; 60 J. P. 72 ; 12 T. L. R. 157."

Page 620, note (b) to section 33 (1), line 14 from bottom of page—Add to note : “All three conditions must exist not only at the time of the passing of the resolution, but also at the time of the making of the demolition order. *Vale v. Southall Norwood Urban District Council*, 60 J. P. 134 ; 40 Sol. Journ. 291.”

Page 737, line 12—Add to end of first paragraph of note to section 43 of the Local Government Act, 1894 : “But a married woman is not qualified by reason of her ownership of property within a parish to be a parochial elector of the parish, for the provision of the section in favour of married women does not create a new qualification. In other words, no woman, whether married or single, is qualified by reason of ownership to be a parochial elector. *Draz v. Efooks* [1896], 1 Q. B. 238 ; 74 L. T. (N.S.) 43 ; 12 T. L. R. 185.”

Page 821, line 11 of note (b)—After references to *Caledonian Railway v. Walker's Trustees*, add “*Kirby v. Harrogate School Board*, W. N. [1896], 12 (7) ; 100 L. T. Newsp. 337 ; 60 J. P. 182.”

Page 838, last line—Add “*Dunhill v. North Eastern Railway Company* [1896], 1 Ch 121 ; 65 L. J. Ch. 178 ; 73 L. T. (N.S.) 644 ; 44 W. R. 231 ; 12 T. L. R. 91.”

Page 861, lines 1 and 2—With reference to the proviso to section 36 of the Markets and Fairs Clauses Act, 1847, add a note : “See *Attorney-General of the Duchy of Lancaster v. Liverpool New Cattle Market Company*, W. N. [1896], 30 (2) ; 12 T. L. R. 261.”

Page 889, line 23—For references to *Allen v. London County Council* substitute “[1895], 2 Q. B. 587 ; 64 L. J. M. C. 228 ; 73 L. T. (N.S.) 101 ; 43 W. R. 674 ; 59 J. P. 644 ; 11 T. L. R. 537 ;” and add to note “*London County Council v. Pryor*, W. N. [1896], 15 (9) ; 31 L. J. Notes, 114 ; 12 T. L. R. 241.”

Page 910, second line of note (b)—After *Hill v. Somerset*, 51 J. P. 356, insert “but see *Brotherton v. Tittensor*, 60 J. P. 72,” and in ninth line, after “annoyance,” insert “And by a bye-law purporting to be made by a county council for the good rule and government of the county under section 16 of the Local Government Act, 1888, and prohibiting the singing or reciting of any profane or obscene song or ballad or the use of any profane or obscene language in any public place, without adding ‘to the annoyance of the public,’ or words to the like effect, was held invalid for that reason. *Strickland v. Hayes*, 60 J. P. 164 ; 12 T. L. R. 199.”

Page 913, note (f)—Add “And a similar enactment has been held in Scotland not to apply to blasting in a quarry. *Murray v. Keith*, 22 Ct. Sess. Cas., 4th ser. (J. C.) 17 ; 32 Scottish Law Reporter 70.”

Page 961, last line of note (b)—Add 59 J. P. 697, affirmed in C. A., 60 J. P. 23 ; 12 T. L. R. 101.

Page 1011, line 3 from bottom—After *Buckler v. Wilson*, add references “ [1896], 1 Q. B. 83 ; 65 L. J. M. C. 18 ; 73 L. T. (N.S.) 588 ; 60 J. P. 118 ; 12 T. L. R. 94.”

Page 1013, note (f)—Add to end of note “See also to the same effect, *Fortune v. Hanson* [1896], 1 Q. B. 202 ; 60 J. P. 88 ; 12 T. L. R. 164.”

Page 1013, note (h)—Add “The certificate, however, is not conclusive, and if the defendant tenders himself as a witness and is examined, the justices may prefer his evidence to the certificate, on the question of fact. *Hewitt v. Taylor*, W. N. (1896) 13 (1) ; 31 L. J. Notes 115 ; 74 L. T. (N.S.) 51 ; 40 Sol. Journ. 277 ; 60 J. P. 116 n ; 12 T. L. R. 192.”

Page 1015, third paragraph of section 27 of the Sale of Food and Drugs Act, 1875—Add a note “The summons need not be served within twenty-eight days of the purchase of the article, if not purchased for test purposes, as required by section 10 of the 42 & 43 Vict. c. 30, *post*. *Cook v. White*, W. N. (1896) 14 (2) ; 31 L. J. Notes 115 ; 74 L. T. (N.S.) 53 ; 60 J. P. 116 n ; 12 T. L. R. 192.”

Page 1063, line 10—As to the consent of the Local Government Board, add a note, “This consent must be obtained every time fresh proceedings are taken, although in respect of a continuance of the same pollution. See *Ex parte Mersey and Irwell Watershed Joint Committee*, 59 J. P. 756.”

Page 1094, twenty-fourth line of note (a)—After “use of these engines had been conducted,” add “see also *Bishop Auckland Urban District Council v. Murphy*, 60 J. P. 153.”

Page 1199, note (c)—Add at end “and see *Attorney-General v. Trustees of London Parochial Charities*, W. N. (1896) 8 (3); 31 L. J. Notes 83; 100 L. T. 358; 12 T. L. R. 168.”

ADDENDA ET CORRIGENDA

IN VOLUME I.

Page 205, line 16, at end of section *add* reference to note (o).

Page 210, line 8 from bottom, *after* "Mary" *insert* "Islington."

Page 222, line 2 from bottom, *after* the words "whether a building" *insert* "is a new building."

Page 236, note (a), *for* 10 & 11 Vict. c. 82 *read* 10 & 11 Vict. c. 89.

Page 313, first line of note (t), *for* 35 & 36 Vict. c. 18 *read* 35 & 36 Vict. c. 79, s. 18.

Page 317, line 6 from bottom, end of note (d) *for* 37 & 38 Vict. c. 49 *read* 37 & 38 Vict. c. 89.

Page 319, sixth line of note (b), *after* "redeemable" *insert* "within a specified time."

Page 438, note (a) to Schedule III., Rule 1, *add* at end of note "also under section 4 of the Borough Funds Act, 1872, *post*, for charging on the rates the cost of promoting or opposing bills in Parliament."

Page 454, line 6 from bottom, *for* 35 & 36 Vict. c. 76, s. 34, *read* 35 & 36 Vict. c. 79, s. 34.

Page 470, line 5 from bottom, *for* "sewage" *read* "sewers."

Page 640, last line but one of note to section 52, *for ante*, p. 169, *read ante*, p. 619 and *add* to note, "see also section 38, *ante*, p. 624, as to representations as to obstructive buildings."

THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. CAP. 55.)

An Act for consolidating and amending the Acts relating to Public Health in England.

[11th August, 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

Section 1.

1. This Act may be cited as the Public Health Act, 1875.

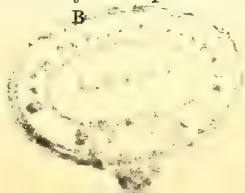
Short title.

This Act is for the most part a consolidation Act, repealing all previous statutes relating to the Public Health, and re-enacting them with certain amendments. The observations of BRETT, J., in *Reg. v. Prince*, L. R. 2 C. C. R. 154 ; 44 L. J. M. C. 22 ; 32 L. T. (N.S.) 700 ; 24 W. R. 76 ; 13 Cox C. C. 138 ; 39 J. P. 676, with reference to the construing of the language used in consolidation statutes, may be usefully referred to. Adverting to the use of several words or forms of expression applicable to statutory offences, he observes :—"They are but differences in form, and though they be all or though several of them be in one consolidating statute, they are not to be construed by contrast." Then he cites the following passage from *Greaves on the Criminal Law Consolidation Acts*, p. 3 :—"If any question should arise in which any comparison may be instituted between different sections of any one or several of these Acts, it must be carefully borne in mind in what manner these Acts were framed. None of these were re-written ; on the contrary, each contains enactments taken from different Acts passed at different times, and with different views and frequently varying with one another in phraseology, and, for the reasons stated in the introduction, these enactments for the most part stand in these Acts with little or no variation in their phraseology, and consequently their differences in that respect will be found generally in these Acts. It follows, therefore, that any argument as to the intention of the legislature which may be drawn from difference in the terms of one clause from those in another, will be entitled to no weight in the construction of such clauses, for that argument can only apply with force where an Act is framed from beginning to end with one and the same view, and with the intention of making it thoroughly consistent throughout." The effect of this judgment is that the meaning of any particular phrase used in any particular section of a consolidating statute is not to be bound or limited by the meaning of the same phrase in some other section, but is for the court with reference to the particular subject-matter being dealt with in the particular section.

2. This Act shall not extend to Scotland or Ireland, nor (save as by Extent of this Act is expressly provided) to the Metropolis. Act.

The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 102, now provides as follows :—

(1.) The provisions of the Public Health Acts, which are set out in the Second Schedule to this Act, except so far as they are superseded by this Act, shall extend



**Note to
Section 2.**

to the parish of Woolwich, and to the local board of health thereof, in like manner as they apply to any urban sanitary district elsewhere, and the sanitary authority thereof, without prejudice to the existing effect of the Metropolis Management Act, 1855, and the Acts amending the same, or to the powers, duties, and liabilities of the county council and the local board of health of Woolwich under the latter Acts.

(2) The Woolwich Local Board may borrow for the purposes of this Act in like manner as if those purposes were purposes of the Public Health Acts.

Woolwich was created a local board district by Provisional Order, confirmed by 15 & 16 Vict. c. 69, ss. 1, 2, 4. By 18 & 19 Vict. c. 120, s. 238, it was brought within the jurisdiction of the Metropolitan Board of Works for certain purposes, and for these purposes it is still part of the metropolis, and subject to the jurisdiction of the London County Council. The Public Health Act, 1875, did not apply to the metropolis, which, as defined by section 4, *post*, included Woolwich. Now, however, that Act will apply to Woolwich to the extent above mentioned.

Division of
Act into
parts.

3. This Act is divided into parts as follows :—

Part I.—Preliminary.

Part II.—Authorities for Execution of Act.

Part III.—Sanitary Provisions.

Part IV.—Local Government Provisions.

Part V.—General Provisions.

Part VI.—Rating and Borrowing Powers, &c.

Part VII.—Legal Proceedings.

Part VIII.—Alteration of Areas and Union of Districts.

Part IX.—Local Government Board.

Part X.—Miscellaneous and Temporary Provisions.

Part XI.—Saving Clauses and Repeal of Acts.

Besides these parts, the Act contains five schedules in which most important provisions are set out, namely, the rules for the proceedings of local boards and committees, for the election of members of such boards (now repealed), for the convening of meetings of owners and ratepayers, and the proceedings thereat, a supply of forms for numerous objects, and the repeal of previous Acts.

Definitions.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them ; that is to say,—

In *Reg. v. JJ. of Cambridgeshire*, 7 A. & E. 491, Lord DENMAN, C.J., says :—"We apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances ; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should." In the *Attorney-General v. Corporation of Worcester*, 15 L. J. Ch., at p. 399, Lord COTTENHAM, C., said : "The object of these Acts being framed with interpretation clauses is, by the means and through the agency of the interpretation clause, to avoid the necessity of frequent repetition in describing all the subject-matter to which the Act was intended to apply. It uses, therefore, an expression, and then, by the interpretation clause, declares that that expression shall have certain meanings other than the ordinary meaning of the word used, and the way to apply that interpretation clause is, when you find the word used in other enactments, to follow the direction of the interpretation clause, and, according to the subject-matter, to read it as if it contained the other words which by the interpretation clause it is meant to include." In *Lindsay v. Cundy*, 1 Q. B. D. 348 ; 45 L. J. Q. B. 381 ; 34 L. T. (N.S.) 314 ; 24 W. R. 730, BLACKBURN, J., said :—"The interpretation clause is a modern innovation, and

frequently does a great deal of harm, because it gives a non-natural sense to words which are afterwards used in a natural sense without noticing the distinction." In another case the same learned judge said : " It is a common practice in modern Acts to introduce interpretations into Acts. I am old enough to remember when that was a novelty, and the older draughtsmen said, likely to be a very mischievous novelty. I think that experience has shown that the older draughtsmen had some reason but the practice is now inveterate." *Portsmouth (Mayor, &c., of) v. Smith*, 10 App. Cas. 364 ; 54 L. J. Q. B. 473 ; 53 L. T. (N.S.) 394 ; 49 J. P. 676. It ought, therefore, to be strictly construed. *Allsop v. Day*, 7 H. & N. at p. 463, per POLLOCK, C.B. In *Midland Railway Company v. Ambergate, &c., Railway Company*, 10 Hare, at p. 369, WOOD, V.C., said :—" With regard to all these interpretation clauses, I understand them to define the meaning, supposing there is nothing else in the Act which is opposed to the particular interpretation." And in *Reg. v. Pearce*, 5 Q. B. D. at p. 389, LUSH, J., said :—" An interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." See also the observations of Lord CAMPBELL, C.J., in *Reg. v. Sudbury Burial Board*, E. B. & E. 265 ; of WILLES, J., in *Ablert v. Pritchard*, L. R. 1 C. P. 214 ; of Lord St. LEONARDS, in *Dean of Ely v. Bliss*, 2 De G. M. & G. at p. 471 ; and of Lord SELBORNE, in *Robinson v. Barton Local Board*, 8 App. Cas. 798 ; 53 L. J. Ch. 226 ; 50 L. T. (N.S.) 57 ; 32 W. R. 249 ; 48 J. P. 276.

It is right to notice the remark, per GIFFARD, L.J., in *Ex parte Morris*, L. R. 5 Ch. 174 :—" General words will not be so construed as to destroy special exemptions or special privileges ;" and see *Thorpe v. Adams*, L. R. 6 C. P. 125 ; and in *Earl of Bury v. Bury Commissioners*, L. R. 4 Ex. 222, how this proposition is well illustrated. Again, in *Ebbs v. Boulnois*, L. R. 10 Ch. 484, JAMES, L.J., observes :—" It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other."

[See also on the same subject notes under the definition of " union " and " street " in this section, *post*, pp. 5, 12.]

" Borough " means any place for the time being subject to the Act of " Borough " the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled " An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same :

These Acts have all been repealed and for the most part re-enacted by a consolidating and amending statute, the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

By sections 6 and 7 of the new Act " borough " means, unless a contrary intention appears, every city and town to which the Municipal Corporations Act, 1835, applied at the commencement of that Act (*i.e.*, 1st January, 1883), and to any town, district, or place, whereof the inhabitants are incorporated after the commencement of that Act, and whereto the provisions of the Municipal Corporations Acts are under that Act extended by charter, but to no other place. See also the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 15.

" The Metropolis " means the city of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855 :

18 & 19 Vict. c. 120. For a list of the parishes and places mentioned in the Schedules to the Act, see *Woolrych's Metropolis Local Management Acts*, p. 145. By the express mention of the city of London, the definition of the metropolis contained in the previous Act is rendered more exact. It is to be observed that it does not extend to the *Metropolitan Police District*, as to the limits of which see 10 Geo. 4, c. 44 ; 2 & 3 Vict. c. 47, and amending Acts collected in 4 *Chitty's Statutes*, p. 1360.

The parish of Woolwich, which is within the metropolis as above defined, was by the Public Health (London) Act, 1891, s. 102, made subject to certain provisions of this Act. See the note to section 2, *ante*, p. 2.

Section 4.

“Local
government
district” and
“local board.”

“Local government district” means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and “local board” means any board so constituted :

The Local Government Acts are defined in Schedule V., Part I., *post*, to be The Public Health Act, 1848 ; The Local Government Act, 1858 ; The Local Government Act (1858) Amendment Act, 1861 ; and the Local Government Amendment Act, 1863.

As to the constitution of local government districts in pursuance of this Act, see sections 271, 272, *post*.

The restricted meaning of the phrase “local board” should be noticed, as it is frequently used in a popular sense as synonymous with “local authority.”

It is necessary to retain this definition as the expression is used in this Act ; but by section 21, sub-section (1) of the Local Government Act, 1894 (*post*), the districts of urban sanitary authorities are now to be called urban districts, and local boards urban district councils.

“Improvement Act district.”

“Improvement Act district” means any area for the time being subject to the jurisdiction of any improvement commissioners as hereinafter defined :

“Improvement Commissioners.”

“Improvement Commissioners” means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating :

This definition was taken from 35 & 36 Vict. c. 79, s. 60, but the term town government occurred in 24 & 25 Vict. c. 61. It is not clear what the term implies here, as it is most appropriately applied to a municipal corporation. But 11 & 12 Vict. c. 63, s. 10, affords a reasonable explanation of the term as signifying “An Act for paving, lighting, cleansing, watching regulating, supplying with water, or improving” any place when there is also a power of rating. Improvement Commissioners are now called urban district councils and their districts urban districts. See the Local Government Act, 1894, s. 21, sub-sect. (1), *post*.

“Parish.”

“Parish” means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :

This definition is adopted from 29 & 30 Vict. c. 113, s. 18 (Poor Law Amendment Act, 1866). Overseers are and may be appointed for places or districts distinct from parishes.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 5, it is provided that in every Act passed after the year 1866 the expression “parish” shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which an overseer is or can be appointed. This definition supersedes that in the text, but it is practically identical.

Districts are often formed with reference to the boundaries of parishes. Some questions have arisen in regard to extra-parochial places, but these no longer exist, for by the Extra-Parochial Places Act, 1857 (20 Vict. c. 19), s. 1, after the 31st day of December, 1857, every place entered separately in the report of the Registrar-General on the last census which then was or was reputed to be extra-parochial, and wherein no rate was levied for the relief of the poor, is in future for all purposes of the assessment to the poor rate to be deemed a parish ; and the justices having jurisdiction in such place are to appoint overseers therein. And by the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27, from the 25th day of December, 1868, every place which was or was reputed to be extra-parochial, whether entered in the Registrar-General's report or not, for which no overseer had been appointed, or was then acting, or which had not then been annexed to and incorporated with an adjoining parish under 20 Vict. c. 19, s. 4, is for all civil parochial purposes to be annexed

to and incorporated with the next adjoining parish with which it has the largest common boundary, and in case there should be two or more parishes with which it has boundaries of equal extent then with that parish which contained the lowest amount of rateable value.

The section last-mentioned further provides that every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the 25th December, 1868, had not been included within the boundaries of or annexed to and incorporated with any parish, shall for all civil parochial purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins in proportion to the extent of the common boundary. It is presumed that this provision applies to districts constituted before the present Act was passed. In *Blackpool Pier Company v. Fylde Union*, 46 L. J. M. C. 189; 36 L. T. (N.S.) 251; 41 J. P. 344, a pier was constructed of a wooden deck resting on iron piles driven into the sands, so that the water flowed under it, and no alteration was made in the line of low-water mark. It was held that the part of the pier beyond low-water mark, being beyond the realm, was not extra-parochial within the meaning of this Act, and as such annexed to any other parish, nor was it an accretion from the sea.

When a parish extends up to a tidal river, but there is nothing to show whether it does or does not extend beyond the line of ordinary or medium high-water mark, land between such high-water and low-water mark cannot be assumed to be within the parish; and there is no distinction in this respect between land on the sea-shore and land on the shore of a tidal river. *Duke of Bridgewater's Trustees v. Surveyors of Highways of Bootle-cum-Linacre*, L. R. 2 Q. B. 4; 7 B. & S. 348; 36 L. J. Q. B. 41; 15 L. T. (N.S.) 351; 15 W. R. 169; 30 J. P. 725. See also *Reg. v. Musson*, 8 E. & B. 900; 27 L. J. M. C. 100; 4 Jur. (N.S.) 111; 22 J. P. 609; *McCannon v. Sinclair*, 2 E. & E. 53; 28 L. J. M. C. 247; 5 Jur. (N.S.) 1302; 23 J. P. 757; *Ipswich Dock Commissioners v. St. Peter's, Ipswich*, 7 B. & S. 310; 30 J. P. 820.

“Union” means a union of parishes incorporated or united for the “Union.” relief or maintenance of the poor under any public or local Act of Parliament,^(a) and includes^(b) any parish^(c) subject to the jurisdiction of a separate board of guardians :

“Guardians” means any persons or body of persons by whom the “Guardians.” relief of the poor is administered in any union :^(d)

(a) Previously to the coming into operation of the Local Government Act, 1894, the union, exclusive of any urban district within it, was coterminous with the rural sanitary district. Unions were mostly formed under 4 & 5 Wm. 4, c. 76; a few were constituted under special local Acts, but these were urban districts. Since the passing of the Act of 1894 the rural district is no longer necessarily coterminous with the union, which may now include more than one rural district. See section 24, sub-section (5) of that Act, *post*.

(b) In *Reg. v. Kershaw*, 6 E. & B. 1007; 26 L. J. M. C. 23; 20 J. P. 741; *ERLE, J.*, points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an extending and the latter an excluding signification. Generally, however, an interpretation clause does not restrain the meaning of the words interpreted: *Doe v. Benham*, 7 Q. B. 979. See as to the meaning of the word “include,” *Worsley v. South Devon Railway Company*, 16 Q. B. 539; *Ex parte Ferguson*, L. R. 6 Q. B. 280, 291, per BLACKBURN, J., 35 J. P. 468; *Jones v. Cook*, L. R. 6 Q. B. 505; 35 J. P. 403; *Pound v. Plumstead Board of Works*, L. R. 7 Q. B., per BLACKBURN, J., at p. 194; 36 J. P. 468; *Baker v. Mayor, &c., of Portsmouth*, 3 Ex. D. 4, 157; *Robinson v. Barton Local Board*, 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 276; *Nutter v. Accrington Local Board*, 4 Q. B. D. 375; 43 J. P. 635.

(c) For parishes and places out of the metropolis under a separate board of guardians, see *The Poor Law General Orders*, by Macmorran and Lushington, p. 268. But some of these are urban sanitary districts of themselves, or contain such within their area.

(d) This word also applies to a parish: see *ante*.

Section 4.

“Person” includes any body of persons, whether corporate or unincorporate :

In 11 & 12 Vict. c. 63, s. 2 (Public Health), this word was applied to corporations aggregate or sole. It is presumed that the latter are included here.

“Local authority.”

“Local authority” means urban sanitary authority and rural sanitary authority :

See section 5, *post*, p. 24.

“Surveyor.”

“Surveyor” includes (a) any person appointed by a rural authority to perform any of the duties of surveyor under this Act : (b)

(a) See as to the meaning of this word, the note on the word “union,” *ante*, p. 5.

(b) This word is thus defined with reference to the rural sanitary authority, because such authority may not in many cases appoint a special officer as their surveyor under this Act. See section 190, *post*, as to the powers of a rural authority to appoint officers or servants.

“Lands” and “premises.”

“Lands” and “Premises” includes messuages, buildings, lands, easements and hereditaments, of any tenure :

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, provides that in every Act passed after the year 1850, the expression “land” shall include messuages, tenements and hereditaments, houses and buildings of any tenure. This definition of land supersedes that in the text. It will be noticed that the new definition omits “easements.” The definition of “premises” in the text is not affected. It was intimated in *Oldacre v. Hunt*, 19 Beav. 492 ; 6 De G. M. & G. 390, that the word “land,” as defined by section 2 of the Public Health Act, 1848, included a right of fishery. The Lords Justices did not give any express decision on this point ; but it is to be observed that the definition in that section did not, as in the present Act, include the word *easement*, which is introduced into this definition as a new term. As to the effect of this, see section 15, note (c), p. 37, *post*.

The term *hereditaments* includes every kind of property that can be inherited. Hereditaments are either corporeal or incorporeal. The former are tangible, and are practically the same as land ; the latter are not tangible, but are the rights and profits annexed to or issuing out of land, as, for example, tithes, rents, rights of common, &c.

A church was held not to be included in the term land in the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77. *Angell v. Vestry of Paddington*, 9 B. & S. 496 ; L. R. 3 Q. B. 714 ; 37 L. J. M. C. 171 ; 32 J. P. 742 ; and see *Wright v. Ingle*, 16 Q. B. D. 379 ; 55 L. J. M. C. 17 ; 34 W. R. 221.

A railway in the metropolitan district was carried across a new street by an arch. On one side of the street the railway was carried forward on arches, and on that side was a strip of land 10 feet wide left open for the purpose of repairing the arches ; this abutted for 10 feet on the street. On the other side the railway was carried forward on an embankment, and the sloping part or buttress of the embankment abutted on the street about 36 feet, and at the foot of the embankment was an open space also about 36 feet wide, also abutting on the street, and left for the purpose of allowing of slips in the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land*. *Higgins v. Harding*, L. R. 8 Q. B. 7 ; 42 L. J. M. C. 31 ; 37 J. P. 677 ; and see *Great Eastern Railway Company v. Hackney District Board*, 8 App. Cas. 687 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 31 W. R. 769 ; 48 J. P. 52 ; see also the next note.

“Owner.”

“Owner” means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent :

The use of the word *means* here appears to be restrictive, and to imply that what follows is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a nominal ground rent is not within the

definition. See *Evelyn v. Wychcord*, *Cook v. Montague*, *Caudwell v. Hanson*, *Poplar Board of Works v. Lowe*, *infra*.

By section 2 of the Nuisances Removal Act, 1855, the word *owner* includes any person receiving the rent of the property in respect of which the word is used, from the occupier of such property, on his own account, or as trustee or agent for any other person. A. was lessee for 21 years, at a rack-rent, of a house and shop; he occupied the shop himself, and underlet the upper part of the house to B. as a yearly tenant. The upper part was shut off from the shop, and A. had no access to it. There was a privy in the upper part of the house, which the nuisance authority took proceedings to abate, as a nuisance arising from a defective construction of a structural convenience; and they proceeded against C., who received the rent from A. as agent for A.'s landlord:—Held, that C. was not owner, as he did not receive the rent from B., who was the occupier of the premises on which the nuisance arose, and of which A. was the owner. *Cook v. Montague*, L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 37 J. P. 53. It is to be observed that the words "from the occupier of such property," which occur in the Nuisances Removal Act, are not in the text. But it is submitted that the omission is not material, and that the person who is the owner within the meaning of the definition must always be determined with reference to the occupier. The point may be of importance where there are intermediate lessors. The opinion here expressed is borne out by a decision upon the identical definition in the Public Health (Ireland) Act, 1878, s. 2. There J. let to B. from year to year at a rack-rent, and B. let to weekly tenants: it was held that B., and not J., was the owner. *Bowen v. James*, 10 L. R. Ir. 26. But see *Walford v. Hackney Board of Works*, *post*, p. 8.

By section 250 of the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), owner is defined to mean the person for the time being receiving the rack-rent of the lands or premises in connection with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. The owner of houses abutting on a new street occupied the land under a building agreement, by which the owner of the land agreed to demise to the owner of the houses or his nominees the several pieces of land upon which he was to build, as the houses and buildings respectively became erected and covered, for 80 years, at the rent of a peppercorn for two years, and of sums increasing every year up to 364*l.* in the sixth and following years. He was to be considered as holding the undemised portion on the terms of the leases. There was a power of re-entry upon non-completion of the building covenants. The houses at the date when the expenses which were the subject of the action were incurred, were in every stage of building progress, and some had been demised to other persons at defendant's nomination:—Held, that with the exception of the houses demised to other persons, he was liable as owner of all the premises. Per BLACKBURN, J.: "He was in actual occupation; his peppercorn rent was to be raised to a ground rent. There could not be a reason for saying that the freeholder was receiving the rack-rent. It may be a substantial rent, but not such as to prevent the defendant from being the owner." *Poplar Board of Works v. Lowe*, 29 L. T. (N.S.) 915. In *Lady Holland v. Vestry of Kensington*, L. R. 2 C. P. 565; 36 L. J. M. C. 105; 31 J. P. 758, A., being owner in fee of certain land, entered into a building agreement with B., whereby B. agreed to build certain houses on part of the land, and lay out the remainder as a garden for the exclusive use of the tenants of the houses, and A. agreed to grant to B. a lease of each house as it was built, and to grant him a lease of the garden with the last house; and it was expressly agreed that B. should have no interest in any house or land until a lease of it was granted. B. built some of the houses, but not all, and laid out the garden, and A. subsequently sold the reversion of the houses which were built to C. The parish in which the land was situated having paved a road running past the garden, claimed repayment of the expense from A. It was held that A. was the owner, and therefore liable. Per WILLES, J.: "If the houses had been all built, and B. had obtained a lease of the garden, he would have been trustee for the inhabitants of the houses under the section. But at present A. is the legal owner, subject only to certain easements possessed by the inhabitants of the houses that have been built, and to the consideration that if and when certain acts are done she will be bound to grant the legal estate to B. It may be that she only holds as trustee for the inhabitants of the houses, but it is not only the beneficial owner but the owner who holds as trustee for others that is liable to make the payments under the Acts." In *Vestry of St. Mary, Islington v. Cobbett*, 64 L. J. M. C. 36; 71 L. T. (N.S.) 573; 43 W. R. 44; 58 J. P. 716; 15 R. Jan. 443, the vestry had in pursuance of section 5 of the Metro-

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politan Open Spaces Act, 1881, *post*, acquired the residue of a term of 26 years in the centre portion of a square, used as a pleasure ground for the occupiers of houses in the square, by an assignment of a lease which contained covenants by the lessee together with a covenant to enable the lessor to re-enter on breach of the lessee's covenants, and it was held that the vestry were "owners" of such centre portion of the square. In *Walford v. Hackney Board of Works*, 43 W. R. 113; 11 T. L. R. 17; 15 R. Jan. 266, H. let premises to W. for a term of years at the rent of 25*l.*, subsequently increased to 31*l.*, and W. sublet the premises again, agreeing to accept the same rent as he himself paid, and paid it over to H. without any deductions, and it was held that W. was not the "owner" of the premises.

The Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3 (now repealed and replaced by the London Building Act, 1894, 57 & 58 Vict. c. ccciii., s. 5 (29)), provided that the word *owner* shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term, or as a tenant at will. It was held that an owner of land in fee simple, who let it on a building lease at a peppercorn rent, was not liable as owner, such a rent not being within the meaning of the section. *Evelyn v. Wychcord*, E. B. & E. 126; 27 L. J. M. C. 211; 31 L. T. (o.s.) 96; 6 W. R. 468; 4 Jur. (n.s.) 808; 22 J. P. 658. In *Coven v. Phillips*, 33 Beav. 18; 8 L. T. (n.s.) 622; 11 W. R. 706; 9 Jur. (n.s.) 657, it was held that a tenant in possession, having an equitable interest only under an agreement for a lease for a term of three years, is in equity an owner under this section. In *Hunt v. Harris*, 19 C. B. (n.s.) 13; 34 L. J. C. P. 249; 13 L. T. (n.s.) 742; 11 Jur. (n.s.) 485; 13 W. R. 742, the lessee of a house for a long term of years who have underlet it in different portions to different tenants, and who was in receipt of the rents from such underlettings, was held to be the owner of the party-wall of such house within the meaning of the above section, notwithstanding that the underlettings created a greater interest in the undertenants than that of a yearly tenancy. The two preceding cases were discussed in *Fillingham v. Wood* [1891], 1 Ch. 51; 60 L. J. Ch. 232; 64 L. T. (n.s.) 46; 39 W. R. 282; 7 T. L. R. 66. There it was held that a tenant in possession of part of a house under an agreement for a greater interest than as tenant from year to year was an adjoining owner entitled to be served with a party-wall notice under the Act, and that service on a person in receipt of the whole of the rents of the tenement was not sufficient. In *Mourlyan v. Labalmondiere*, 1 E. & E. 533; 30 L. J. M. C. 95; 3 L. T. (n.s.) 668; 7 Jur. (n.s.) 627; 25 J. P. 340, the appellants were seised in fee of a building used as a chapel which they had let on lease for 21 years. It was held that they were not, but that the lessee was, the owner within the meaning of the section. In *Cudwell v. Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 25 L. T. (n.s.) 525; 20 W. R. 202; 36 J. P. 470, the appellant, who was seised in fee of certain building land, entered into an agreement with L. to grant building leases of 99 years of certain plots of the land, so soon as L. should have erected houses thereon, at a peppercorn rent until June 24th, 1870, and afterwards at 2*l.* a year. L. built houses which were roofed in about September, 1870, and it was held that he was the owner, and that it was immaterial whether his title were legal or equitable only. And see to the same effect *St. Helen's Corporation v. Riley*, 47 J. P. 471. In *Reg. v. Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22; 39 L. T. (n.s.) 605; 43 J. P. 302, it was held that the incumbent of a district church in the metropolis, although the freehold of the church was vested in him, was not the owner within the above section, as he neither received the rents and profits of the church nor was in occupation of it. But in *Folkestone (Corporation of) v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. (n.s.) 574; 21 W. R. 97, where it was held that a church was a house within the meaning of a bye-law prescribing a building line, it was held that a perpetual curate, in whom the freehold was vested, was the owner. As to the case where land is devised for a long term on trust to pay debts, &c., see *Mansell v. Norton*, 22 Ch. D. 769.

The trustee of a national school is an owner. *Bowditch v. Wakefield Local Board*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 36 J. P. 197. The Ecclesiastical Commissioners, in whom a church not built by them was vested, were held not to be the owners within the 25 & 26 Vict. c. 102. *Angell v. Vestry of Paddington*, 9 B. & S. 496; L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742. By 8 & 9 Vict. c. 70 (Church Building Acts Amendment Act), s. 13, the "freehold of the site of every church" of which the Commissioners therein mentioned shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site

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for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated :—Held, that upon such consecration, the whole of the land so conveyed to the Commissioners vested in the incumbent ; that the Commissioners ceased to be the owners of it, and were therefore not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street. *Plumstead District Board of Works v. Ecclesiastical Commissioners for England* [1891], 2 Q. B. 361 : 64 L. T. 830 ; 39 W. R. 700 ; 55 J. P. 791. But the trustees of a dissenting chapel, registered as a place of religious worship, were held liable as the owners of a house in *Caiger v. St. Mary, Islington (Vestry of)*, 50 L. J. M. C. 59 ; 44 L. T. (N.S.) 605 ; 29 W. R. 538 : 45 J. P. 570. And a leasehold chapel vested in trustees on trust, to permit it to be used as a place of religious worship by a congregation of Wesleyans, was held to be a house within the meaning of the same Act, on the ground that by consent of the landlord the trustees, and the *cestui quis trustent*, the trusts might at any moment be put an end to ; it was also held that the trustees were owners of the chapel. *Wright v. Ingle*, 16 Q. B. D. 379 ; 55 L. J. M. C. 17 ; 54 L. T. (N.S.) 511 ; 34 W. R. 221 ; 50 J. P. 436. The defendants were the trustees of a chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purpose of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members ; but the money received did not cover the costs of the entertainments. A bazaar and a sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to the defendant B. and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under section 150 of the above Act, requiring them to pave, &c., the portion of the street upon which the chapel abutted, the complainants executed the work themselves, and obtained an order of justices for the repayment by the defendants of the expenses thus incurred :—Held, that the defendants were the “owners” of the premises when the works were completed within section 257 of the Act, and that they did not come within section 151, which exempts from liability “the incumbent or minister of any church, chapel, or place appropriated to public religious worship,” and that the order of the justices was, therefore, rightly made. *Hornsey Local Board v. Brewis*, 60 L. J. M. C. 48 ; 64 L. T. 288 ; 55 J. P. 389 ; W. N. (1890) 189 ; 7 T. L. R. 27. The owner of private roads adjoining land belonging to him was held to be an owner within the meaning of the same Act. *Pound and Lord Northbrook v. Plumstead Board of Works*, L. R. 7 Q. B. 183 ; 41 L. J. M. C. 51 ; 36 J. P. 468. But a land society which had set out and dedicated certain roads to the public, and sold off the building plots fronting them, was held by the Exchequer Chamber not to be owners of land within the Act, a previous decision of the Court of Queen’s Bench being reversed. *Plumstead Board of Works v. British Land Company*, L. R. 10 Q. B. 203 ; 44 L. J. Q. B. 38 ; 39 J. P. 376. In that case, Lord COLERIDGE, C.J., distinguished *Lord Northbrook v. Plumstead Board of Works* (*sup.*), on the ground that Lord Northbrook had here “for his own purposes determinately reserved his property in the private roads to himself. He might at any time have put an end to the dedication of them to his own tenants, which was all he had ever done. There was no dedication of it to the public, and there was nothing done past recall.” The same learned judge, referring to *Angell v. Vestry of Paddington* (*sup.*), indicates an opinion that when expenses are sought to be recovered under such Acts as the Public Health Acts from persons as owners of land, it is not enough that they should be owners of land or houses “for real property purposes,” but they must be “the owners of land which could be let at a rack-rent within the meaning of the statute.” This decision was followed by POLLOCK, B., in *Hampstead Vestry v. Cotton*, 16 Q. B. D. 475 ; 55 L. J. Q. B. 213 ; 54 L. T. (N.S.) 441 ; 34 W. R. 244 ; 50 J. P. 453. In *Wright v. Ingle*, *supra*, BOWEN, L.J., said :—“The section does not confine the term ‘owner’ to those persons who could receive a rack rent from the particular premises, or who could let them at a rack rent ; it includes those persons who would receive the rack rent if the premises were let at a rack rent, and I think *Bowditch v. Wakefield Local Board*, *supra*, is a conclusive authority, if authority were wanted, to show that a man is not the less the owner of premises because, by

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the provisions of the deed under which he holds them, they cannot, so long as he holds them, be let at a rack rent. Whether in the case of premises which were prevented by an Act of Parliament from being let at a rack rent, there ever could be an owner within the meaning of the section I very much doubt. I am inclined to think that if the incapacity to be let were stamped upon the premises, they never could have an owner within the meaning of the section." Referring to these words STIRLING, J., in *Re Christchurch Inclosure Act, Meyrick v. Attorney-General* [1894], 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. (N.S.) 122; 42 W. R. 614; 58 J. P. 556; 10 T. L. R. 555; held them inapplicable to the facts of that case. There it was sought to make liable for paving expenses, the lord of a manor as owner of a common which originally formed part of the manor, and was afterwards by an Inclosure Act vested in the lord, subject as regarded the surface of the common to the rights of the occupiers of certain cottages. It was held that the lord of the manor was liable as owner of the common, though it was assumed that the Inclosure Act prevented the lord from letting the common.

The appellants were a public body having certain jurisdiction and powers over the river Thames, the bed and soil whereof and of the shores within the flux and reflux of the tides were vested in them by statute. The Acts by which their duties were regulated gave them various powers for the improvement of the navigation of the river, but gave them no power of scavenging or removing nuisances, and their power of raising funds, and the application of the funds when raised, were strictly limited by statute, and did not include a power of raising money for the sanitary improvement of the river. It was held that under their Acts of Parliament the appellants were owners of the soil and foreshore of the river for certain specified purposes only, and were not owners thereof, so as to be liable to abate a nuisance thereon. *Thames (Conservators of the River) v. London (Port Sanitary Authority of)* [1894], 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. (N.S.) 803; 58 J. P. 335; 10 T. L. R. 161.

The respondents were a cemetery company incorporated by Act of Parliament whereby it was provided that part of the cemetery should be set apart for the interment of the dead according to the rites of the Church of England, and might be consecrated for that purpose, and when so consecrated should for ever thereafter be set apart and applied exclusively for the uses of Christian burial. Under their Act the company had power to sell the exclusive right of burial in vaults in perpetuity or for a limited period, but were prohibited from selling or disposing of any land which had been consecrated or set apart or used for the burial of the dead. It was held that as the company were owners in fee of the land with the power of letting or selling the land for the purposes of interment, and as, moreover, there was nothing to prevent them from letting it or part of it to another cemetery company at a rack-rent so long as it was used as a cemetery, they were liable as owners to contribute towards the expenses of paving a road which bounded the consecrated part of the cemetery. *St. Giles, Combervell (Vestry of) v. London Cemetery Company* [1894], 1 Q. B. 699; 63 L. J. M. C. 74; 70 L. T. (N.S.) 734; 42 W. R. 446; 58 J. P. 382.

In *Truman, Hanbury, Buxton and Company, Limited v. Kerslake* [1894], 2 Q. B. 774; 63 L. J. M. C. 222; 43 W. R. 111; 58 J. P. 766; 10 R. 489, it was held that, where the lessee of premises not let at a rack-rent has sub-let them for the whole term less a few days, the rent reserved, and the covenants and conditions being the same as in the original lease, the sub-lessee and not the lessee is the owner of the premises within the meaning of the definition.

In *Great Eastern Railway Company v. Hackney District Board of Works*, 8 App. Cas. 687; 52 L. J. M. C. 105; 49 L. T. (N.S.) 509; 31 W. R. 769; 48 J. P. 52, the company were sought to be charged as owners of land abutting on a new street. The street was carried over the railway cutting by a bridge, the parapets of which consisted of two walls resting upon arches, which had their foundations outside the lines of the roadway in the company's land. The walls were not used otherwise than as fences for the bridge. It was held that the company were not liable as owners. "The bridge is, by the statute, dedicated to public use, and its fence walls are provided for public protection; and if the ownership and control of the walls is in the company, it is so for public purposes; and subject to the obligation of perpetual maintenance, unless and until some other good and sufficient fences shall be provided by the company in their stead for the public protection. The company could not let the walls at a rack-rent; and if they might use them for any purpose, it must be a use subordinate to the public purposes to which the bridge, as a structure, is in its whole devoted." This case was distinguished in *Williams v. Wandsworth District Board of Works*, 13 Q. B. D. 211; 53 L. J. M. C.

187; 32 W. R. 908; 48 J. P. 439. There the appellant was held to be chargeable as owner of a strip of land, 4 inches wide and 265 feet in length, upon which he had erected a boundary fence along the whole extent of the strip, under a covenant to erect and for ever maintain a fence thereon made with his vendor, who was the owner of the land adjoining the strip.

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Upon a similar definition in a local Act, it was held that an agent employed to collect the rents of property charged with an apportionment of paying expenses was an owner, and liable as such to be called upon to pay, whether he had money of his principal in hand or not, at any time while the sum assessed upon the premises remained unpaid. *St. Helen's (Mayor &c., of) v. Kirkham*, 16 Q. B. D. 403; 34 W. R. 440; 50 J. P. 647. In *Cook v. Montague (sup.)*, BLACKBURN, J., said: "The object of the legislature seems to have been this, that as the occupier was often poor, and the real owner might be difficult to discover, it was well to get at the collector of rents, who could always be found out; and hence the person who receives the rack-rent from the occupier is deemed the owner." But the above definition of "owner" does not include a receiver appointed by the Court. *Bacup (Corporation of) v. Smith*, 44 Ch. D. 395; 59 L. J. Ch. 518; 63 L. T. (N.S.) 195; 38 W. R. 697. A second mortgagee entered into possession of premises and collected the rents, which he applied in paying his outgoings and the interest on the first mortgage which exhausted all the receipts. It was held that he was the owner and liable as such for paying expenses. *Tottenham Local Board v. Williamson*, 62 L. J. Q. B. 322; 69 L. T. (N.S.) 51; 57 J. P. 614; 9 T. L. R. 372. Trustees in receipt of rents are owners though not beneficially interested. *In re Barney, Harrison v. Burney* [1894], 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. (N.S.) 180; 43 W. R. 105; 8 R. 459.

The definition of *premises* avoids difficulties in the interpretation of the word, such as arose with reference to section 3 of the Factory Act, 1867, in *Kent v. Astley* L. R. 5 Q. B. 19; 39 L. J. M. C. 3; and *Redgrave v. Lee*, 43 L. J. M. C. 105; L. R. 9 Q. B. 363.

"Rack-rent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; (a) and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent: (b)

"Rack-rent"
and "full
net value."

(a) See the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 109.

(b) This definition is taken from the Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1, and is what is set out in the column of the rate in the schedule headed *rateable value*. As to the meaning of the words "free from all usual tenant's rates and taxes," &c., see *Lumley's Union Assessment Committee Acts*, p. 20; *Lumley's Parochial Assessments*, p. 30; and *Hackett v. Overseers of Long Bennington*, 9 L. T. (N.S.) 769; 16 C. B. (N.S.) 38; *Reg. v. Hall Dare*, 34 L. J. M. C. 17; 11 L. T. (N.S.) 301. In the last-mentioned case, SHEE, J., explained the words "free from," as being equivalent to "without regard to," or "putting aside." The explanation of this definition is probably best given in the words of the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), s. 4, which declares that "gross value means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all the usual tenant's rates and taxes and tithe commutation rentcharge (if any) and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent. Rateable value means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid." From this it will be seen that the net annual value in the definition is the same as the rateable value as defined in the Metropolitan Act.

Tenant's rates and taxes means those which are borne by the occupier as distinguished from the owner of land, and include poor, highway, watering, watching, police, borough, board of health or district rates; but not land tax or property tax

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"Street."

"Street"(a) includes any highway (not being a turnpike road),(b) and any public bridge (not being a county bridge),(c) and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not :(d)

(a) Notwithstanding the definition in the text, the word *street* is used throughout the Act in different senses. In *Robinson v. Barton Local Board*, 8 App. Cas. 798 ; 53 L. J. Ch. 226 ; 50 L. T. (N.S.) 57 ; 32 W. R. 249 ; 48 J. P. 276, Lord SELBORNE said : "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable ; but to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this : that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in ; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous) ; and by *new street*, a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it." From this it will appear that the definition in the text does not invariably govern the meaning of the word *street* throughout the Act, and it is important to distinguish the various meanings which have been assigned to the term in different sections.

In *Taylor v. Corporation of Oldham*, 4 Ch. D. 395 ; 46 L. J. Ch. 105 ; 35 L. T. (N.S.) 696 ; 25 W. R. 178, JESSEL, M.R., held that the word *street*, as used in section 16, included private streets and roads ; in fact, he decided that the word must be interpreted according to the extended meaning assigned to it by the above definition. The same meaning must evidently be given to it as used in section 32.

In section 26 the word *street* is used to mean the roadway as distinguished from the roadway with the houses, and it is probably used in the sense assigned to it by the above definition. The same remark applies to sections 42, 57, 72, and 126.

It has been expressly decided that *street* in section 149 includes a country lane of which the herbage may be let. It is, therefore, used in its extended sense as here defined. *Coverdale v. Charlton*, 4 Q. B. D. 104 ; 48 L. J. Q. B. 128 ; 40 L. T. (N.S.) 88 ; 26 W. R. 687 ; 43 J. P. 268. And see to the same effect *Nutter v. Accrington Local Board*, 4 Q. B. D. 375 ; 48 L. J. Q. B. 487 ; 40 L. T. (N.S.) 802 ; 43 J. P. 635 ; decided on the corresponding section of 11 & 12 Vict. c. 63. In *Robinson v. Barton Local Board*, *supra*, Lord SELBORNE said : "In section 149 of this Act, and the sections which follow it, the word *street* manifestly has the same sense as when we speak of a man going out of his house into the street, or carriages passing along the street. There the public highway, whether footway or carriage-way, is alone intended, and the houses on either side are certainly not included in that case in the street. And I should be inclined myself to say that this would *prima facie* be the sense of the word *street* when it is used in a context which contains no indication of anything more."

Section 150 is the complement of section 149, and it would seem that the word *street* as therein used has the same meaning. That the word means the roadway as distinguished from the road with the houses is clear, and the *dictum* of Lord SELBORNE, already quoted, applies to section 150 as well as to section 149. The cases have not consistently decided whether the word is used in its natural and ordinary sense of a roadway with houses on both sides, or in the wider meaning assigned to it by the definition. *Maude v. Baildon Local Board*, 10 Q. B. D. 394 ; 48 L. T. (N.S.) 874 ; 47 J. P. 644, apparently decides that the word *street* is used in section 150 in its natural sense as distinguished from its extended meaning. But

in *Portsmouth (Mayor, &c., of) v. Smith*, 13 Q. B. D. 184; 53 L. J. Q. B. 92; 50 L. T. (N.S.) 308; 48 J. P. 404, the MASTER OF THE ROLLS questioned that decision, pointing out that it had proceeded upon a mistaken view of *Reg. v. Dayman (infra)*. And the court decided that the word street as used in section 53 of the Towns Improvement Act, 1847 (which corresponds to section 150 of this Act), had to be interpreted according to the definition, and, therefore, included a highway which was not a street in the ordinary sense. And in the case of *Midland Railway Company v. Watton*, 17 Q. B. D. 30; 55 L. J. M. C. 99; 55 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405, the court assumed that in section 150 the word street was used as here defined. But all doubt on the subject is now removed by the decision of the Court of Appeal in *Jowett v. Idle Local Board*, W. N. (1888) 87; 57 L. T. (N.S.) 928; 36 W. R. 34; followed in *Richards v. Kessick*, 57 L. J. M. C. 48; 59 L. T. (N.S.) 318; 52 J. P. 756; *Fenwick v. Croydon Rural Sanitary Authority* [1891], 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. (N.S.) 645; 40 W. R. 124; 55 J. P. 470; 7 T. L. R. 594. These cases decide that the word "street," as used in section 150, means a street as above defined, and not merely a street in the ordinary sense. A place may therefore, be a street, though the property in the soil belongs to private persons. See *Baird v. Tunbridge Wells (Mayor, &c., of)* [1894], 2 Q. B. 867; 64 L. J. Q. P. 145; 71 L. T. (N.S.) 211; 59 J. P. 36; 10 T. L. R. 378, where it was held that a corporation could not lawfully erect lavatories under the surface of a street which was not vested in them, though by a local Act they were empowered to do so in any street or public place.

The word *street* in section 156 was used in its ordinary sense, viz., a road with houses on each side. This was so held upon the corresponding words of 24 & 25 Vict. c. 61, s. 28. *Reg. v. Fulford*, 33 L. J. M. C. 122; 10 L. T. (N.S.) 346; 10 Jur. (N.S.) 522; 12 W. R. 715; 28 J. P. 357. And see *Thomas v. Roberts*, 43 J. P. 574; and *Reg. v. Platts*, 28 W. R. 915, decided with reference to section 66 of the Towns Improvement Clauses Act, 1847. But section 156 has been repealed by 52 and 53 Vict. c. 52, *post*, and in that Act the word "street" would appear to have the meaning assigned to it by the above definition. See section 2 of that Act.

The word *street* in section 157 is used with reference to *new streets*, and was held to mean not only the roadway but the roadway with the houses. In *Baker v. Mayor, &c., of Portsmouth*, 3 Ex. D. 4; 37 L. T. (N.S.) 381; 25 W. R. 677; affirmed in the Court of Appeal, 3 Ex. D. 157; 47 L. J. Ex. 223; 37 L. T. (N.S.) 822; 26 W. R. 303; 42 J. P. 278, BRAMWELL, L.J., said: "I have come to the conclusion that the words of sub-section (1) 'with respect to the level, width, and construction of new streets,' include the construction of the buildings, and the buildings themselves and front gardens, or whatever else is at the side of the roadway. I have come to this conclusion, not upon any authority, for I cannot see that any authority has any bearing upon the matter, except to show that the word *street* may have such a meaning, but because it is the right meaning of the words." A similar interpretation had been put upon the term as used in a local Act in *Galloway v. Corporation of London*, L. R. 1 H. L. 34; 35 L. J. Ch. 476; 12 Jur. (N.S.) 747; 14 L. T. (N.S.) 865; 30 J. P. 580, though it was said in another case decided upon a different section of the same Act, that this was not the *prima facie* meaning of the word, and it was accordingly held that the word as used in the last-mentioned section did not include the houses. *London, Chatham, and Dover Railway v. Mayor, &c., of London*, 19 L. T. (N.S.) 250. An urban authority made a bye-law under the Public Health Act, 1875, directing that all new streets should be of a width of not less than 10 feet. Certain ways existed communicating with the backs of houses, and used by the urban authority, who did the scavenging of the town, for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval to the urban authority, showing ways such as above described of the width of six feet, and the urban authority, acting under the bye-law, refused to approve such plans. It was held, discharging a rule for a *mandamus* to compel the approval of the plans, that the ways in question were "passages" within the meaning of the above definition, and, therefore, streets. *Reg. v. Goole Local Board* [1891], 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. (N.S.) 595; 30 W. R. 608; 55 J. P. 535. In this connection may be mentioned cases decided upon such words as "houses within the street" (*Baddeley v. Gingell*, 1 Ex. 319; 11 J. P. 838); "houses forming the street" (*London School Board v. St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. (N.S.) 504; 24 W. R. 137; 40 J. P. 310). The case of *Baker v. Mayor, &c., of Portsmouth (supra)* was approved by the House of Lords in *Robinson v. Barton Local Board*, 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 276, where it was held that a country lane which had long been

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a street within the meaning of the definition might become a new street when houses came to be built by the side of it. This had already been decided under the Metropolis Management Acts in *Pound v. Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461; 20 W. R. 117; 36 J. P. 468; *Dryden v. Overseers of Putney*, 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40 J. P. 263.

It has been stated that the question whether a place is a street is a question of fact only after it has been determined in what sense the word street is used in the particular case under consideration. See *Eccles v. Wirrall Union*, 17 Q. B. D. 107; 55 L. J. M. C. 106; 34 W. R. 412; 50 J. P. 596. But it is always a question of fact whether a place already a street as above defined has become a new street. *Reg. v. Dayman*, 7 E. & B. 672; 26 L. J. M. C. 128; 3 Jur. (N.S.) 744; 22 J. P. 39; *Reg. v. Fulford (supra)*; *Reg. v. St. Mary, Islington*, E. B. & E. 743; 22 J. P. 383; *St. Mary, Islington v. Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85; 30 L. T. (N.S.) 11; 38 J. P. 198; *Dodd v. Vestry of St. Pancras*, 34 J. P. 517; *Bowles v. St. Mary, Islington*, 39 J. P. 757; *Reg. v. Shiel*, 50 L. T. (N.S.) 590. *Wilson v. St. Giles, Camberwell (Vestry of)* [1892], 1 Q. B. 1; 61 L. J. M. C. 3; 65 L. T. (N.S.) 790; 40 W. R. 41; 56 J. P. 167; 8 T. L. R. 20; *St. Giles, Camberwell (Vestry of) v. Crystal Palace Company* [1892], 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. (N.S.) 840; 40 W. R. 648; 57 J. P. 5; 8 T. L. R. 233. And see also *North London Railway Company v. St. Mary, Islington*, 27 L. T. (N.S.) 672; 21 W. R. 226; 37 J. P. 341; *Robinson v. Barton Local Board (supra)*, and the cases cited in the notes to section 157. It is to be observed, however, that the court will inquire whether there has been any evidence to justify the finding of the justices. *Williams v. Powning*, 48 L. T. (N.S.) 672; 47 J. P. 486; *Midland Railway Company v. Watton*, 16 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405.

The word *street* as used in the statutes incorporated by the Public Health Act, 1875, must in general be interpreted with reference to the definition of the term contained in these Acts respectively. Per Lord BLACKBURN in *Mayor, &c., of Portsmouth v. Smith*, 10 App. Cas. 364; 54 L. J. Q. B. 473; 53 L. T. (N.S.) 394; 49 J. P. 676. And see *Curtis v. Embery*, L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143; *Maddock v. Wallasey Local Board*, 55 L. J. Q. B. 267; 50 J. P. 404.

Newman v. Baker, 8 C. B. (N.S.) 200, decided upon the Metropolitan Building Act, 1855, may be referred to, but it throws little, if any, light on the construction of the text.

Metropolitan Board of Works v. Nathan, 54 L. T. (N.S.) 423; 34 W. R. 164; 50 J. P. 502; 2 T. L. R. 112, decided with reference to the same Act, shows that there may be a place with houses on both sides, which is, nevertheless, not laid out as a street within the meaning of that Act. In that case artisans' dwellings had been erected opening into an approach 100 feet long and 16 feet wide, entered from a public street through a gateway 10 feet wide, over which one of the buildings was carried. A roadway had previously existed on the site, with warehouses abutting thereon, and the gateway included the site of a former gateway which had been pulled down and altered to a greater width. The approach did not afford communication with any other public street, and was for the sole use and convenience of the tenants of the dwelling, to the exclusion of the public, no right of way having ever been dedicated to the public. It was held that the approach had not been laid out "as a street for foot traffic only."

The word *street* as used in the Metropolis Management Acts is defined in words identical with those in the text. For a case in which the term was interpreted with reference to the definition, see *Hampstead Vestry v. Hoopel*, 15 Q. B. D. 652; 54 L. J. M. C. 147; 33 W. R. 903; 49 J. P. 741; and see *Hampstead Vestry v. Cotton*, 12 App. Cas. 1; 56 L. J. Q. B. 225; 56 L. T. (N.S.) 1; 35 W. R. 505; 51 J. P. 340.

A space of ground from 33 to 58 feet wide between the footway and the carriage-way, which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such user to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be part of a street, having been only partially dedicated to the public. *Le Neve v. Vestry of Mile End Old Town*, 27 L. J. Q. B. 208; 22 Jur. 660; 8 E. & B. 1054; 22 J. P. 657.

A *cul-de-sac* may be a street and public highway. *Souch v. East London Railway Company*, L. R. 16 Eq. 105; 42 L. J. Ch. 477; 21 W. R. 590; 37 J. P. 644. So also

a highway, one end of which has been legally stopped. *Reg. v. Burney*, 39 J. P. 599. But a way ceases to be a public highway when the access to it at either end has become impossible by reason of the legal stopping up of ways leading to it. *Bailey v. Jamieson*, 1 C. P. D. 329; 34 L. T. (N.S.) 62; 24 W. R. 456; 40 J. P. 486.

(b) "A turnpike road is a road across which turnpike gates are erected and tolls taken. . . . A turnpike road is a road having toll-gates or bars on it. . . . The distinctive mark of a turnpike road is the right of turning back any one who refuses to pay toll." Per Lord ABINGER, C.B., in *Northam Bridge and Roads Company v. London and Southampton Railway Company*, 6 M. & W., at p. 438. A footpath by the side of a turnpike road is part of the road. *Loveridge v. Hodson*, 2 B. & Ad. 602. This definition does not exclude a street which is also a turnpike road from the operation of other sections referring to streets, such as that vesting streets in local boards. *Nutter v. Accrington Local Board*, *supra* (per BRETT and COTTON, L.J.J., BRAMWELL, L.J., dissenting). "The interpretation clause is not restrictive. It does not say that the word *street* shall be confined to any highway not being a turnpike road, but that it shall 'apply to and include any highway not being a turnpike road,' &c. That is enlarging, not restricting, the meaning of *street*; and in my opinion that which, independently of the Act of Parliament, in ordinary language, is properly a street, does not cease to be so because it is part of a turnpike road." Per COTTON, L.J. But a private individual cannot, by making a road, erecting a gate, and charging tolls, make such road a turnpike road, and such a road is a street as above defined. *Austerberry v. Corporation of Oldham*, 29 Ch. D. 750; 53 L. T. (N.S.) 543; 33 W. R. 807; 49 J. P. 532; *Midland Railway Company v. Watton*, 16 Q. B. D. 30; 55 L. J. M. C. 99; 64 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405.

The moment a road ceases to be a turnpike road it becomes a street within the above definition. Per Lord ESHER, M.R., in *Hampstead Vestry v. Cotton*, 16 Q. B. D. 483; 54 L. T. (N.S.) 441.

(c) See *Arnell v. Regent's Canal Company*, 12 C. B. 697; 14 C. B. 564, as to how far a canal bridge was brought within the terms of a local paving Act. When a street passes over a canal by a bridge, the bridge may, for some purposes, be deemed to be a street. Per WIGHTMAN, J., in *Beaver v. Mayor, &c., of Manchester*, 26 L. J. Q. B. 311. When a street is carried over a railway by means of a bridge, it is only the street, and not the bridge itself, which vests in the local authority under section 149. *Great Eastern Railway Company v. Hackney Board of Works* (per Lord WATSON), 8 App. Cas. 687; 52 L. J. M. C. 105; 49 L. T. (N.S.) 509; 31 W. R. 769; 48 J. P. 52.

A county bridge is one, the duty of repairing which is cast by law on the inhabitants of the county at large. This duty extends to every public bridge erected before 1803, unless it is transferred to some persons or person or corporation by custom, prescription, or tenure of land. Bridges built since 1803 are not repairable by the county unless they have been erected in compliance with the 43 Geo. 3, c. 59, s. 5, or have been declared to be so repairable pursuant to the 41 & 42 Vict. c. 77, s. 21.

(d) "The Act expressly calls places *streets* whether they are public property or private property, and whether the public have any rights over them or have no rights over them," Per JESSEL, M.R., in *Taylor v. Corporation of Oldham*, 4 Ch. D., at p. 407. And see *Midland Railway Company v. Watton*, *supra*.

"House" includes schools, also factories and other buildings in which "House."
[more than twenty] persons are employed [at one time]:

The words in brackets were repealed by 41 & 42 Vict. c. 16, s. 107, sched. 6 (Factory Act, 1878). How far this term is extended to any house remains for judicial decision.

It is not to be read into section 42 of this Act (*post*), and therefore a steam laundry, although containing a dwelling-house for the manageress and for the clerk in charge, is not a "house" for the purpose of the removal of "house refuse" under that section. Per CHARLES, J., in *London and Provincial Laundry Company v. Willesden Local Board* [1892], 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696.

There is no definition of a "house" here, but only an extension of the term. Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law, for illustration of the word "house." *Prima facie* a house means a dwelling-house (*Surnam v. Darley*, 14 M. & W.

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181); or a building calculated to be used as such (*Nunn v. Denton*, 8 Scott New Rep. 794; *Daniel v. Coulsting*, *ib.* 949): but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed.

A church was held not to be a house in *Angell v. Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742; 9 B. & S. 496. But this case had reference to the section of the Metropolis Management Act, 1862, which renders the owner of a house liable for the expenses of paving, &c. A church may be a house within the meaning of a bye-law or order prescribing a building line. Per MALINS, V.C., in *Corporation of Folkestone v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. (N.S.) 574; 21 W. R. 97. A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts. *Caiger v. Vestry of St. Mary, Islington*, 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 29 W. R. 538; 45 J. P. 570. The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses. This decision was followed in *Wright v. Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 54 L. T. (N.S.) 511; 34 W. R. 221; 50 J. P. 436. There it was held that the word "house" includes every building which is capable of being used as a human habitation. If a building, which is physically capable of being so used, is prevented, either by common law or by statute, from ever being put to such a use, it is exempted from the liability to contribute to the expense of paving a street in the metropolis. Thus, a consecrated church of the Established Church of England, is exempted, because, by reason of its consecration, it becomes, by the common law, for ever incapable of being used as a habitation for man. But a leasehold chapel, vested in trustees, in trust to permit it to be used as a place of religious worship for Wesleyans, is a house, because, by the consent of the landlord, the trustees, and the *cestuis qui trustent*, the trust may at any moment be put an end to. And see the note to the definition of the expression "owner," *ante*, p. 7.

The word "house" under the Public Health Act, 1848 (11 & 12 Vict. c. 63), was held to apply to a toll-house on a turnpike road. *Tunstall Turnpike Roads (Trustees of) v. Lowndes*, 20 J. P. 374.

In *Hole v. Commissioners of Milton*, 31 J. P. 804, it was held that buildings and yards used for purposes of business did not come within the description of "house" (for the purposes of a rate made under a Local Improvement Act), unless they were also within the curtilage of the house; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word house. Therefore, a mill which opened into a yard adjoining a house, and which had internal communication with the outbuilding and house, was held to be part of the house and property included in the rates.

A public-house was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house only by a narrow foot pavement also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the public-house since 1802; it was used by customers of the public-house, and it furnished the only means of approach to vehicles to the front of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the meaning of the Lands Clauses Act, s. 92. *Marson v. London, Chatham, and Dover Railway Company*, 1 De G. & J. 446. See also, as to the meaning of the word curtilage, *Asquith v. Griffin*, 48 J. P. 724; *Pilbrow v. St. Leonards, Shoreditch (Vestry of)* [1895], 1 Q. B. 433; 59 J. P. 68; 72 L. T. (N.S.) 135; 43 W. R. 342; 11 T. L. R. 178. See also *St. Martin's (Vestry of) v. Bird* [1895], 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. (N.S.) 868; 43 W. R. 194.

In *Wright v. Wallasey Local Board*, 18 Q. B. D. 783; 56 L. J. Q. B. 259; 52 J. P. 4; 3 T. L. R. 525, it was held that the word "house" in section 10 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), did not include the curtilage.

In *Reg. v. JJ. of Warwickshire*, 17 L. T. (O.S.) 183, a coach-house and stables adjoining, and occupied with a dwelling-house, and forming part of the same premises, were held to be part of the "house" within the meaning of a Local Paving Act.

As to what constitutes a dwelling-house, see *Lawson v. Fraser*, 8 L. R. Ir. 55, where premises used as a corn store and kiln, part of which had formerly been used

as a dwelling-place, and in which the respondent occasionally slept, were held to be a dwelling-house.

"Building" is a word of wider signification than "house." See per TURNER, L.J., in *Grosvenor v. Hampstead Junction Railway Company*, *supra*.

In *Reg. v. Gregory*, 3 L. J. M. C. 25, an open shop roofed in, connecting the shop front with a newly-built house, was held to be a building within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway.

An erection made of wood, 30 feet long and 13 feet wide, was brought along the streets on wheels and put at the corner of a new street. It had spouts and a down corner, had a supply of gas, and was used as a butcher's shop :—Held, that it was a new building, *Richardson v. Brown*, 49 J. P. 661.

In *Stevens v. Gourlay*, 1 F. & F. 498 ; 29 L. J. C. P. 1 ; 1 L. T. (N.S.) 33 ; 6 Jur. (N.S.) 147 ; 8 W. R. 85 ; 7 C. B. (N.S.) 99, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry, and capable of being lifted from the ground, was held to be a building within 18 & 19 Vict. c. 122. In *Poplar Board of Works v. Knight*, E. B. & E. 408 ; 28 L. J. M. C. 37 ; 5 Jur. (N.S.) 196, it was held that a house simply built on the surface of the ground, without any foundations in the ordinary sense, was nevertheless a building within 18 & 19 Vict. c. 120, s. 204, which prohibited the erection of buildings over sewers. In *Morrish v. Harris*, L. R. 1 C. P. 155 ; 35 L. J. C. P. 101 ; 13 L. T. (N.S.) 762 ; 14 W. R. 479 ; 12 Jur. (N.S.) 627, a structure built of stone, having four walls and a door, which was used by the tenant for keeping guano and other manures, which he used on adjoining land, was held to be a building within the Reform Act (2 Will. 4, c. 45), s. 27 ; but the term, as used in that Act, does not include everything which can be called a building ; "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building." Per ERLE, C.J., in *Powell v. Boraston*, 34 L. J. C. P. 73 ; 18 C. B. (N.S.) 175 ; 11 L. T. (N.S.) 734 ; 13 W. R. 465 ; 29 J. P. 550 ; 11 Jur. (N.S.) 160. In *Watson v. Cotton*, 17 L. J. C. P. 68 ; 5 C. B. 51 ; 11 Jur. 1106 ; 2 Lutw. R. C. 53, decided with reference to the same Act, a shed described as standing against a wooden paling, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpaulin, which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building.

Where a bedroom had been erected in place of a conservatory, the external wall of the house having been raised for the purpose, and the justices upon a summons for making an addition to an existing building without complying with certain bye-laws, held that there was no addition to an existing building on the ground that the bedroom occupied no more space than the conservatory did, the court sent back the case to the justices, holding that this fact was not, *per se*, conclusive. *Meadows v. Taylor*, 24 Q. B. D. 717 ; 59 L. J. M. C. 99 ; 62 L. T. (N.S.) 658 ; 54 J. P. 757.

In *Bowes v. Low*, L. R. 9 Eq. 636, a vinery attached to a wall was held to be a building. But a conservatory, 15 feet long by 9 feet deep, constructed of wood and glass without any heating apparatus and built against the side of a house, was held not to be a building within the meaning of a bye-law requiring buildings to be erected of stone, brick, &c. *Hibbert v. Acton Local Board*, 5 T. L. R. 274. Whether a high wall would be so, *quære*. It was considered by Lord HATHERLEY, in *Child v. Douglas*, Kay, 560 ; 5 De G. M. & G. 739, that a dwarf wall forming a fence was not. See *Weston v. Arnold*, L. R. 8 Ch. 1084 ; 43 L. J. Ch. 123 ; 22 W. R. 284 ; in reference to a party-wall. A local Act prohibited the erection of all houses, "and every other building whatever," within 30 feet of the centre of a road :—Held, by the Court of Session in Scotland (Lord YOUNG dissenting) that this prohibition did not apply to a parapet wall 1 foot in height surrounded by a railing 5 feet 3 inches in height. *Partick (Commissioners of) v. Great Western Steam Laundry*, 13 Ct. of Sess. Cas. (4th series) 500. As to whether fence walls of a canal being erected in a public place constituted a public building, see *Arnell v. Regent's Canal Company*, 12 C. B. 697 ; 14 C. B. 564. In *Ellis v. Plumstead Board of Works*, 68 L. T. (N.S.) 291 ; 41 W. R. 496 ; 57 J. P. 359 ; 5 R. 237, it was held that a wall, 9 inches thick and 7 feet 8 inches high above the level of the ground, and 14 inches thick below that level and 20 feet long, was a building structure, or erection within section 75 of the Metropolis Management

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Amendment Act, 1862 (25 & 26 Vict. c. 102), not being merely required as a boundary wall or fence.

The erection of hoardings for advertisements was held to be a breach of a covenant not to erect or make any building or erection on certain demised premises. *Pocock v. Gilham*, 1 C. & E. 104. But see *Foster v. Fraser* [1893], 3 Ch. 158; 63 L. J. Ch. 91; 69 L. T. (N.S.) 136; 42 W. R. 11; 57 J. P. 646; 9 T. L. R. 502; 3 R. 635. In *Wood v. Rogers* [1894], 3 Ch. 671; 63 L. J. Ch. 845; 71 L. T. (N.S.) 222; 43 W. R. 201, the erection of a substantial trellis work screen, intended to be permanent, was held to be a breach of a similar covenant. Three caravans, a shooting gallery, and a steam roundabout were held not to be "structures or erections of a movable or temporary character" within the meaning of 45 Vict. c. 14, s. 13. *Hall v. Smallpiece*, 59 L. J. M. C. 97; 54 J. P. 710. So, also, a builder's pay office constructed of wood and roofed with zinc and placed upon iron wheels for the purpose of enabling it to be wheeled about to any place where building operations were being carried on. *London County Council v. Pearce* [1892], 2 Q. B. 109; 66 L. T. (N.S.) 685; 40 W. R. 543; 56 J. P. 790; 8 T. L. R. 531. And a bungalow constructed of wood and corrugated iron and erected on a piece of land for the purpose only of exhibition and sale and not for occupation. *London County Council v. Humphreys* [1894], 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. (N.S.) 201; 43 W. R. 13; 58 J. P. 734; 10 T. L. R. 594; 10 R. 533.

A covenant in a purchase deed provided that buildings should not be erected beyond a given line of frontage. It was held that bay windows projecting beyond the line, and carried from the foundation up to the roof, were buildings within the meaning of the covenant. *Lord Mannors v. Johnson*, 1 Ch. D. 673.

Temporary structures, intended to be used for storing workmen's tools, and for the purpose of a brick kiln, were held not to be buildings within the meaning of bye-laws of a local board. *Fielding v. Rhyl Improvement Commissioners*, 3 C. P. D. 272; 42 J. P. 311.

The word *building* is not restricted to erections above the surface of a street. Thus, arches over which a roadway was made, and which were used as store-houses, were held to be buildings within section 7 of the Gasworks Clauses Act, 1847. *Thompson v. Sunderland Gas Company*, 2 Ex. D. 429; 46 L. J. Ex. 710; 37 L. T. (N.S.) 30; 25 W. R. 809; 42 J. P. 198.

As to what is a "new building," see the notes to sections 157, 159, *post*.

"Drain."

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed :

As to the effect of the word "means," see *ante*, p. 5.

There may be instances of drains not comprehended within this definition, as where there is a direct communication from a house to a river or canal or the sea itself.

In *Coulton v. Ambler*, 13 M. & W. 403; 14 L. J. Ex. 10, a navigable river or cut was held not to be a "public or parish drain" within the meaning of a local drainage Act. The word *drain* was also held to include an underground drain when used in the Lands Drainage Act, 1847. *Bowes v. Watson*, 42 L. T. (N.S.) 27; 44 J. P. 364. A dumb well, *i.e.*, one through which waste water flows through a pipe and thence percolates into the soil, was held not to be a "drain or watercourse" within the meaning of 5 & 6 Will. 4, c. 50, s. 67. *Croft v. Rickmansworth Highway Board*, 39 Ch. D. 272; 58 L. J. Ch. 14; 60 L. T. (N.S.) 34.

The effect of this and the next definition is, roughly, that a drain is that which receives the drainage of one house, while a sewer is that which receives the drainage of two or more. But in districts where the Public Health Acts Amendment Act, 1890, is in force when two or more houses belonging to different owners are connected with a public sewer by a single private drain, such drain may for certain purposes be treated as a drain and not as a sewer. See section 19 of that Act, *post*.

As to what is a curtilage, see the cases cited, *ante*, p. 16.

"Sewer."

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies,

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and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act :

As to the word "includes," see *ante*, p. 5.

In *Sutton v. Mayor of Norwich*, 31 L. T. (N.S.) 389, KINDERSLEY, V.C., observed :—"The word *sewer* comes from the word to *sew*, i.e., to drain, and has a much more extended signification than *drain*, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, &c. In the common sense of the term, it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit or to be converted into manure, or other useful purposes."

A marsh wall or embankment keeping back the river Thames from inundating the Isle of Dogs at high water, and through which sewers pass draining the island at low water, was held to be a sewer within the meaning of 18 & 19 Vict. c. 120. "Sewer in its common sense may mean the whole apparatus, and in its specific sense a drain as part of the apparatus." Per Lord CAMPBELL, C.J., in *Poplar District Board of Works v. Knight*, 5 Jur. (N.S.) 196 ; 28 L. J. M. C. 37 ; E. B. & E. 408.

A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, is not a sewer within the meaning of the Public Health Act, 1848. *Reg. v. Godmanchester Local Board*, L. R. 1 Q. B. 328 ; 35 L. J. Q. B. 125 ; 5 B. & S. 936 ; 14 L. T. (N.S.) 104 ; 30 J. P. 164. But where the sewage of certain houses drained into a sewer, and after passing through the sewer was for a period of some years allowed to fall into an open watercourse, which in its turn flowed into a brook :—Held, by DENMAN, J., that under the circumstances the open watercourse was a sewer within the meaning of this definition. *Wheatcroft v. Matlock Local Board*, 52 L. T. (N.S.) 356. And see *Falconar v. South Shields (Corporation of)*, "Times," 8th February, 1895 ; 11 T. L. R. 223.

The word "sewer" should receive the largest possible interpretation, and a drain is a "sewer" as soon as more than one house has been connected with it. Per KAY, J., in *Acton Local Board v. Batten*, 28 Ch. D. 283 ; 54 L. J. Ch. 251 ; 52 L. T. (N.S.) 17 ; 49 J. P. 357. And see to the same effect *Pinnock v. Waterworth*, 51 J. P. 248 ; 3 T. L. R. 563 ; *Bateman v. Poplar District Board of Works* (No. 2), 37 Ch. D. 272 ; 57 L. J. Ch. 579 ; 58 L. T. (N.S.) 720 ; 36 W. R. 501. In the last of these cases, NORTH, J., doubted whether the unlawful act of a stranger in making a communication with a drain could convert it into a sewer. See the note to section 13, *post*, p. 34.

An iron pipe which carried away the effluent water from sewage works was held to be a sewer in *Tottenham Local Board v. Button*, 2 T. L. R. 828.

B. received notice from the K. local board to abate a nuisance on his property, and for that purpose to have a ditch or drain covered up, and the contents conveyed in suitable pipes. Several houses and a slaughter-house of the respondent B. drained into a road drain, and the latter into a ditch in B.'s field, where it was a nuisance, and which the board wanted to be covered up. B. contended that the ditch was a sewer, vested in the appellants, and that it was their duty to cleanse or cover it up. The justices refused to make an order on B., as he was not the person by whose act, default, or surfeasance the nuisance arose. It was held that the justices were right. *Kirkheaton Local Board v. Beaumont*, 52 J. P. 68.

The plaintiff built some houses having drains leading into a line of 6-in. pipes. The line of pipes was intersected by a pit or cesspool, and from thence the pipes passed under the land of a neighbouring owner. That owner cut off the pipes, causing the sewage to flow back and cause a nuisance. The defendants required the plaintiff to abate the nuisance by cleansing the cesspool, and the plaintiff thereupon commenced an action for an injunction to restrain the defendants from causing the nuisance, contending that the cesspool was part of the sewer, and vested in them under section 13, *post*. It was held that the action could not be maintained, as the cesspool was not part of the sewer. *Meador v. West Cowes Local Board* [1892], 3 Ch. 218 ; 61 L. J. Ch. 561 ; 40 W. R. 676 ; 8 T. L. R. 643.

The respondent was the owner of three adjoining houses, plans for the erection of which had been deposited with the local authority in 1868. A drain ran through the basement of the houses to carry off the refuse matter of all three, and was connected with the public sewer in the adjoining street. The drain became defective, and sewage leaked from it into the cellars of two of the houses :—Held, that the drain, though entirely on private ground, was a sewer and not a drain within the meaning

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of the Act, and that, therefore, the respondent was not liable to repair it on notice from the sanitary inspector to abate the nuisance. *Travis v. Uttley* [1894], 1 Q. B. 233; 63 L. J. M. C. 48; 70 L. T. (N.S.) 242; 42 W. R. 461; 58 J. P. 85.

By section 250 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the word "drain" shall mean *and include* any drain of and used for the drainage of one building only, or premises within the same curtilage and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board; and the word "sewer" shall mean *and include* sewers and drains of every description except drains to which the word "drain" interpreted as aforesaid applies.

The drainage of the Lowther Arcade (a passage with a gate at each end, arched over by one roof and containing range of twenty-five houses and shops) was removed by a construction running down the centre of the passage, and receiving the drainage of all these houses and shops. It was held that the construction was not a drain but a sewer, and that the Arcade was not one building nor premises within the same curtilage. *St. Martin's-in-the-Fields (Vestry of) v. Bird*, 43 W. R. 8; 71 L. T. (N.S.) 432; 10 R. 494; affirmed in C. A. [1895], 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. (N.S.) 868; 43 W. R. 194. Buildings consisting of forty-six sets of apartments divided into two blocks, which were separated by a causeway 20 feet wide, were erected without any plans being submitted to the local authority. The drainage was by means of twelve branch drains running from each set of apartments into a main drain under the causeway, which communicated with a sewer within 100 feet of the blocks. The causeway opened to a public thoroughfare, and access to one of the blocks was obtained from the causeway and to the other only from the thoroughfare. It was held by MATHEW and CHARLES, JJ., that the two blocks of buildings were premises within the same curtilage, and that the main drain was a drain and not a sewer, and repairable by the owner of the buildings. *Pilbrow v. St. Leonard's, Shoreditch (Vestry of)* [1895], 1 Q. B. 33; affirmed in C. A. (RIGBY, L.J., *diss.*) [1895], 1 Q. B. 433; 72 L. T. (N.S.) 135; 43 W. R. 342; 59 J. P. 68; 11 T. L. R. 178.

As to the distinction between a sewer and a drain by a "combined operation" within the meaning of the Metropolis Management Acts, see *Bateman v. Poplar District Board of Works* (No. 1), 33 Ch. D. 360; 55 L. T. (N.S.) 374; 56 L. J. Ch. 149. See also on this subject the note to the definition of the expression "drain," *ante*, p. 18, and the notes to 53 & 54 Vict. c. 59, s. 19, *post*. Where the section last mentioned is in force, a drain receiving the drainage of two or more houses belonging to different owners, though a sewer within the above definition, may, for certain purposes, be dealt with as a drain.

"Slaughter-house."

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale:

By a clause in a Local Improvement Act, which closely followed the language of the Markets and Fairs Clauses Act (10 & 11 Vict. c. 14), s. 19, it was enacted that "no person shall slaughter any cattle or dress any carcase for sale as human food, or food of man, in any place within the limits other than a slaughter-house." It was held that to slaughter cattle on the private premises of an inhabitant of the town, unless for sale as human food, was no offence within the clause. *Elias v. Nightingale*, 27 L. J. M. C. 151; 8 E. & B. 698.

"Water company."

"Water company" means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

This word is substituted for the words *waterworks company* in the previous Acts. The undertaking of a waterworks company was transferred by statute to a borough. The profits of the waterworks were under a subsequent statute to be transferred to the borough improvement fund, or, at the option of the corporation, to be applied in

reducing the price of water to consumers. It was held that the corporation were supplying water for their own profit within the meaning of the above definition. *Wolverhampton (Corporation of) v. Bilston (Commissioners of)* [1891], 1 Ch. 315; 39 W. R. 394; 7 T. L. R. 162. But this point was not argued in the Court of Appeal. See W. N. [1891] p. 56; 7 T. L. R. 374.

Note to
Section 4.

“Waterworks” include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock-in-trade (a) of any water company:

(a) These words must include everything not enumerated, but the enumeration appears to be exhaustive.

“Bakehouse Regulation Act” means 26 & 27 Vict. c. 40 (Bakehouse Regulation Act, 1863):

“Bakehouse
Regulation
Act.”

This Act was repealed by the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16). The latter statute contained provisions which in effect took away the control of bakehouses from the local authorities and vested it in the factory inspectors. But the control of the local authorities over bakehouses has since been taken away from the inspectors and re-vested in the local authorities by the Factory and Workshop Act, 1883 (46 & 47 Vict. c. 53), which is set out in the Appendix. See also section 10 and the notes thereto, *post*.

“Artizans and Labourers Dwellings Acts” means 31 & 32 Vict. c. 130 (Artizans and Labourers Dwellings Act, 1868):

“Artizans
and Labourers
Dwellings
Acts.”

This Act, with many other subsequent statutes relating to artizans’ dwellings, is repealed and re-enacted, with amendments, by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 90), *post*.

“Baths and Washhouses Acts” means 9 & 10 Vict. c. 74 (An Act to encourage the establishment of Public Baths and Washhouses); 10 & 11 Vict. c. 61 (An Act to amend the Act for the establishment of Public Baths and Washhouses):

“Baths and
Washhouses
Acts.”

With these must now be read 41 & 42 Vict. c. 14 (The Baths and Washhouses Act, 1878), and the 45 & 46 Vict. c. 30 (The Baths and Washhouses Act, 1882).

“Labouring Classes Lodging Houses Acts” means 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867):

“Labouring
Classes
Lodging
Houses Acts.”

These Acts are repealed and re-enacted by the Housing of the Working Classes Act, 1890, *post*.

“Sanitary Acts” means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act.

“Sanitary
Acts.”

Schedule V., Part I., *post*, contains a list of repealed enactments, and has the following note appended to it: “Of the above Acts the following (namely), ‘The Public Health Act, 1848,’ and ‘The Local Government Act, 1858,’ and ‘The Local Government Act (1858) Amendment Act, 1861,’ and ‘The Local Government Act Amendment Act, 1863,’ are in the Act referred to as ‘The Local Government Acts.’” This definition ought obviously to have been inserted in this section.

Section 4. "Sanitary purposes" means any object or purposes of the Sanitary Acts :

"Sanitary purposes,"

"And of this Act," seeing that the objects and purposes of the Sanitary Acts are the same as those of this Act.

"Court of quarter sessions,"

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises :

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, provides that in every Act, whether passed before or after the commencement of that Act, the expression "Court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the recorder of a municipal borough having a separate court of quarter sessions. This definition does not, however, supersede the text.

The words "or any part of the matter, as the case may be," in the 11 & 12 Vict. c. 63, s. 82, are omitted. Hence, though the district may be situated partly in the jurisdiction of one court of quarter sessions and partly in that of another, it is assumed that the matter in question will arise in one of them only. But if the matter does not arise in one of them only, both courts of quarter sessions would have jurisdiction, and consequently either. The meaning of the definition appears to be that the jurisdiction of a court of quarter sessions over any matter arising within its local limits is not to be affected by the fact that the sanitary district in which it arises is situate in part only within such limits. But it does not give to a court of quarter sessions jurisdiction over a matter not arising within its local limits, merely because the district in which the matter arises extends into such limits.

"Court of summary jurisdiction,"

"Court of summary jurisdiction" means any justice or justices of the peace, stipendiary, or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to :

This is practically the same definition as that which was contained in the Summary Jurisdiction Act, 1879, section 50. In *Reg. v. Price*, 5 Q. B. D. 300 ; 49 L. J. M. C. 49 ; 44 J. P. 248, it was held that the Summary Jurisdiction Acts regulated the procedure only in cases where justices were sitting and acting *judicially* as a court of summary jurisdiction, and not in cases where their duties were ministerial only. But by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 7, it was provided that section 50 of the Summary Jurisdiction Act, 1879, should include such justice, justices, or magistrates as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission, or by the common law. And now by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, it is provided that in every Act, whether passed before or after the commencement of that Act, the expression "Court of Summary Jurisdiction" shall mean any justice or justices of the peace, or other magistrates by whatever name called, to whom jurisdiction is given by, or who is authorised to act under the Summary Jurisdiction Acts, and whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his commission, or under the common law. It follows from this definition that a court of summary jurisdiction will now include justices sitting to enforce payment of poor rates. See *Reg. v. London (Lord Mayor of)*, 57 L. T. (N.S.) 491 ; 52 J. P. 70 ; *Fourth City Mutual Building Society v. East Ham (Churchwardens of)* [1892], 1 Q. B. 661 ; 61 L. J. M. C. 128 ; 56 J. P. 440. And see also *Reg. v. Glamorganshire JJ.* [1892], 1 Q. B. 621 ; 61 L. J. M. C. 169 ; 66 L. T. (N.S.) 444 ; 40 W. R. 436 ; 56 J. P. 437.

“Summary Jurisdiction Acts” means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” and any Act amending the same. Section 4.

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, provides that in every Act, whether passed before or after the commencement of that Act, the expression “Summary Jurisdiction Acts” shall mean the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and any Act, past or future, amending those Acts or either of them.

The amending Acts are the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24); and the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

ADDITIONAL DEFINITIONS.—In addition to the definitions given in the above section, several others are contained in the Act. See as to *Earth Closet*, section 37; *Dwelling*, section 74; *Common Lodging-house*, section 89; *Nuisance Authority*, section 108; *Mortuary*, section 141; *Superintendent Constable*, section 171; *within the prescribed distance*, *ib.*; *General Expenses*, section 228; *Special Expenses*, *ib.*; *Riparian Authority*, section 287; *Port Sanitary Authority*, *ib.*; *Special Act*, section 316; *The Limits of the Special Act*, *ib.*; *The Promoters of the Undertaking*, *ib.*; *The Undertakers*, *ib.*; *Ratepayer*, Sched. III., No. 11; *The Local Government Acts*, Sched. V., Part I.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

Section 5. **5.** For the purposes of this Act England, except the metropolis,^(a) shall^(b) consist of districts to be called respectively—

Urban and rural sanitary districts.

- (1.) Urban sanitary districts, and
- (2.) Rural sanitary districts.

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

This section and the sections immediately following must now be read subject to the provisions of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, which has effected important changes in the styles and in the constitution of sanitary districts.

“The scheme of the Public Health Act, by section 5, appears to have been to divide all England into certain districts, in each of which there was to be an authority either rural or urban ; and each of such districts was to be subject thenceforth to the jurisdiction of the local authority established by such Act, which was to be invested with the powers in the Act mentioned.” Per WILLS, J., in *Lea v. Facey*, 17 Q. B. D. 139, 142.

(a) See the definition in section 4, *ante*, p. 3.

(b) Although this word imports futurity, that is not the operation of the section, seeing that these districts existed at the date of the Act, and all such districts as then constituted were continued by section 326, *post*.

Description of urban districts and urban authorities.

6. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

Urban District.	Urban Authority.
Borough ^(a) constituted such either before or after the passing of this Act.	The Mayor, Aldermen, and Burgesses acting by the Council. ^(b)
Improvement Act district ^(c) constituted such before the passing of this Act, ^(d) and having no part of its area situated within a borough or local government district.	The Improvement Commissioners.
Local Government district ^(e) constituted such either before or after the passing of this Act, ^(f) and having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district. ^(g)	The Local Board.

Provided that (*h*)—

Section 6.

- (1.) Any borough, the whole of which is included in and forms part of a local government district or Improvement Act district, and any Improvement Act district which is included in and forms part of a local government district, and any local government district which is included in and forms part of an Improvement Act district shall, for the purpose of this Act, be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and
- (2.) Where an Improvement Act district is coincident in area with a local government district, the improvement commissioners, and not a local board, shall be the urban authority therein; (*i*) and
- (3.) Where any part of an Improvement Act district is situated within a borough or local government district, or where any part of a local government district is situated within a borough, the remaining part (*k*) of such Improvement Act district or of such local government district so partly situated within a borough shall, for the purposes of this Act, continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs. (*l*)

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the local government district of Oxford. (*m*) So much of the borough of Folkestone as is not included within the local government district of Sandgate shall be an urban district, and shall be under the jurisdiction for the purposes of this Act of the authority for executing "The Folkestone Improvement Act, 1855."

(*a*) See the definition of "borough" in section 4, *ante*, p. 3.

(*b*) See section 198, and the notes to that section, *post*.

(*c*) In section 4, *ante*, p. 4, will be seen the definition of "Improvement Act district" and "improvement commissioners."

(*d*) These were the words used in 35 & 36 Vict. c. 75, s. 4, and of course referred to the date of that Act. These words would have extended the districts to such as were formed in the interval between that Act and the passing of this Act, but in fact none such were created during that period.

(*e*) See in section 4, *ante*, p. 4, the definition of a "local government district."

(*f*) See note (*d*) above. As to how a local government district may be constituted after the passing of this Act, see the notes to section 271, *post*, and the provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 57, *post*.

(*g*) A borough created hereafter will be an urban district.

(*h*) It is to be remembered that all these provisions took effect under previous Acts, but since the passing of the Local Government Act, 1894, the whole of this proviso may be regarded as spent.

(*i*) The case of a borough which was included in 35 & 36 Vict. c. 79, s. 4, prov. 2, is here omitted.

**Note to
Section 6.**

(k) It will be noticed that this proviso does not make any reference to the part which is *within* the borough. That became part of the urban sanitary district. See also section 339, *post*.

(l) See section 270, *post*.

(m) Since the passing of the Local Government Act, 1888 (51 & 52 Vict. c. 41), provisional orders have been made under section 52 of that Act, dealing with some or all of these boroughs, whereby the councils have now become the urban sanitary authorities. See the section and the notes thereto, *post*. Oxford is now a county borough. See further as to Oxford, section 342, *post*.

Incorporation
of local
boards and
improvement
commis-
sioners.

7. Every local board, (a) and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act), by such name as they then bear, (b) and (in the case of local boards constituted after the passing of this Act) by such name (c) as they may with the sanction of the Local Government Board adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any license in mortmain for the purpose of this Act. (d)

The above section is still in force, although local boards and improvement commissioners are called urban district councils. See the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21, sub-sect. (1), *post*.

(a) It must be remembered that local boards and other local authorities were incorporated by 29 & 30 Vict. c. 90 (The Sanitary Act, 1866), s. 46. This clause, therefore, incorporated improvement commissioners who became urban sanitary authorities.

(b) Provision is contained in section 311, *post*, for the change of the name of the corporation.

It may be right to observe that "a parliamentary corporation is a corporation for the purposes only for which it has been established by Parliament, and has no existence for any other purpose, and that whatsoever is done beyond the scope of such purpose is *ultra vires* and void:" per POLLOCK, C.B., in *National Guarantee Manure Company v. Donald*, 4 H. & N. 16. For further information as to the law on the subject the reader is referred to a treatise on the doctrine of *ultra vires* by Mr. Seward Brice.

(c) See section 311, *post*, as to the change of name by a local board.

(d) But for this provision a license in mortmain would be necessary. See 51 & 52 Vict. c. 42, s. 1. It must be noticed that there is no limit to the amount of lands to be held by these incorporated bodies if the lands be required for the purposes of the Act. When a license in mortmain is obtained there is usually such limit. The acquisition of lands for the purpose of the Act is provided for in section 176, *post*.

Election of
local boards.
[Rep. as to
part in italics,
56 & 57 Vict.
c. 73, s. 89.]

8. The members of local boards (a) shall be elective; [*and the number and qualification of members of local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in Schedule II. to this Act.*] (b)

(a) The statute thus provided only for local boards, *i.e.*, boards elected for Local Government Act districts. And see as to certain local boards, section 339, *post*.

(b) This section from "and the number" to the end of the section is repealed by section 89 and the Second Schedule of the Local Government Act, 1894, 56 & 57 Vict. c. 73. The matters therein referred to are now provided for by sections 23

**Note to
Section 8.**

Description of rural districts and rural authorities. [Rep. as to part in italics by 56 & 57 Vict. c. 73, s. 89.]

and 48 of that Act and the Rules of the Local Government Board framed thereunder, which also extend to elections of urban sanitary authorities for other urban districts which are not boroughs, *i.e.*, those which were formerly Improvement Act districts. In boroughs the urban sanitary authority being the town council is elected under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

9. The area of any union(*a*) which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, (*b*) shall be a rural district, and the guardians of the union shall form the rural authority of such district: (*c*) [*Provided* (*d*) that—

- (1.) *An ex officio guardian* (*e*) *resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union :*
- (2.) *An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority :*
- (3.) *Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district ; but until such order has been made, the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.]*

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number [*from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union*], and the person so nominated shall be entitled to act and vote as members of the rural authority, but not further or otherwise. (*f*)

[*Subject to the provisions of this Act, all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act ; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act*]. (*g*)

(*a*) See definition in section 4, *ante*, p. 5.

(*b*) See section 6, *ante*, p. 24. Though the greater part of the union may be comprised in urban districts, yet if all be not, that which remains of the union, though practically only the residue, is a rural district.

**Note to
Section 9.**

(c) These words have not been repealed, but the guardians are no longer the rural authority, which consists of persons elected as rural district councillors. These are guardians for the parishes for which they are elected, and with the guardians for the urban parishes in the union constitute the board of guardians, which is now a body quite distinct from the rural district council. See the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 24, *post*.

(d) These provisoes were repealed by section 89 and Schedule II. of the Local Government Act, 1894, 56 & 57 Vict. c. 73, *post*.

(e) By section 20 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), there shall be no *ex officio* guardians. As to such guardians formerly, see 4 & 5 Will. 4, c. 76, s. 38, amended by 7 & 8 Vict. c. 101, s. 24.

(f) The words in this clause printed in italics were repealed by section 89 and Schedule II. of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*.

The provisions of this clause will apply in cases where by virtue of the Local Government Act, 1894, a rural district formerly situate in two counties becomes divided into two districts, and one or both of these have less than five elected councillors. See section 24 (5) of that Act, *post*.

(g) This clause was repealed by section 89 and Schedule II. of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*.

Powers and
duties of
urban author-
ities.

10. In addition to the powers, rights, duties, capacities, liabilities, and obligations exercisable by, or attaching to an urban authority under this Act, every urban authority shall, within their district (to the exclusion of any other authority (*a*) which may have previously exercised or been subject to the same), have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities, and obligations within such district exercisable or attaching by and to the local authority under the Bakehouse Regulation Act, (*b*) and the Artizans and Labourers Dwellings Act, (*c*) or any Acts amending the same.

Where the Baths and Washhouses Acts, (*d*) and the Labouring Classes Lodging Houses Acts, (*e*) or any of them, are in force within the district of any urban authority, such authority shall have all powers, rights, duties, capacities, liabilities, and obligations in relation to such Acts exercisable by or attaching to the Council, Incorporated Commissioners, Local Board, Improvement Commissioners, and other Commissioners or persons acting in the execution of the said Acts, or any of them.

Where the Baths and Washhouses Acts are not in force within the district of any urban authority, such authority may adopt such Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such acts. (*f*)

Where any local Act other than an Act for the conservancy of any river, (*g*) is in force within the district of an urban authority, conferring on any commissioners, trustees, or other persons, powers for purposes the same as, or similar to, those of this Act (but not for their own pecuniary benefit), all the powers, rights, duties, capacities, liabilities, and obligations of such commissioners, trustees, or other persons in relation to such purposes, shall be transferred, and attach to the said urban authority. (*h*)

(*a*) This section is in terms less extensive than 35 & 36 Vict. c. 79 (The Public Health Act, 1872), s. 7, and only refers to the particular Acts mentioned. The statute in its different parts enables the urban authority to execute the powers thereby confided to them. But the Act of 1872 vested all the powers and liabilities of the sanitary Acts

in the urban sanitary authorities, and the 326th section of this Act gives, in substitution for such powers and liabilities now repealed, the powers and liabilities specified in this Act. The last paragraph of this section provides for powers contained in local Acts.

(b) As already stated in the note to section 4, *ante*, p. 21, this Act is repealed by 41 & 42 Vict. c. 16 (The Factory and Workshop Act, 1878), s. 107. But by the Factory and Workshop Act, 1883 (45 & 46 Vict. c. 52), s. 17, as respects every retail bakehouse, the provisions of that Act, and of sections 3, 33, 34, and 35 of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of the section the medical officer of health is to have the same powers of entry, inspection, &c., as an inspector under the Factory Act. By section 18, a *retail bakehouse* is defined to mean any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale, but by retail in some shop or place occupied together with such bakehouse. The control over bakehouses, which was taken away from the sanitary authorities by the Act of 1878, is therefore restored to them by the Act of 1883, as far as retail bakehouses are concerned. But bakehouses which are not *retail* as defined by the Act are not under the control of local authorities. These remain subject to the provisions of the Act of 1878, and are under the control of the inspectors appointed under that Act. Section 4 of that Act provides, however, that where it appears to an inspector that any act, neglect, or default in relation to any drain, water-closet, earth-closet, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health, but not under that Act, he is to give notice thereof to the sanitary authority of the district, and the sanitary authority are to make inquiry and take action if they think proper. Section 38, *post*, contains provisions which enable the local authority to compel owners or occupiers of factories and workshops to provide proper privy accommodation, and is not affected by the Acts of 1878 or 1883, and is, therefore, in force as respects bakehouses. The provisions of the Factory Acts, the effect of which has been here stated, so far as they are material for the present purpose, will be found set out in full in the Appendix.

(c) These Acts are now repealed and replaced by the Housing of the Working Classes Act, 1890, *post*, the administration of which for the most part falls to the sanitary authorities.

(d) These Acts (9 & 10 Vict. c. 74; 10 & 11 Vict. c. 61; 41 & 42 Vict. c. 14; 45 & 46 Vict. c. 30) so far as material are set out in the Appendix, *post*.

(e) These Acts are also repealed and replaced by the Housing of the Working Classes Act, 1890, *post*.

(f) The adoption of the clauses of the Housing of the Working Classes Act, 1890, which deals with working class lodging houses, is provided for by section 54 of that Act, *post*.

(g) There is no definition of these words, but they are explained in section 327, sub-section (3), and they occur again in section 303.

(h) See section 322, *post*, as to a particular case. It may be well to refer to 20 & 21 Vict. c. 50, s. 2, though it was almost wholly superseded by 35 & 36 Vict. c. 75, s. 7, as interpreted by 37 & 38 Vict. c. 89, s. 3, and now by the above section. It enables trustees under any Act for lighting, paving, &c., any borough to transfer their powers to the borough corporation, and by the interpretation clause "trustees" means "trustees so charged with the execution of a public trust or duty." It was held, however, that a local board are not trustees within the meaning of this definition, and cannot transfer their powers to a borough corporation; and where the district of the local board and the corporation are not identical, that of the former being more extensive (21 & 22 Vict. c. 98, s. 26) did not justify such a transfer. *Swinford v. Keble*, L. R. 1 Q. B. 549; 35 L. J. Q. B. 155; 7 B. & S. 873; 14 L. T. (N.S.) 770; 30 J. P. 533.

The effect of the provision in the text was to reconstitute improvement commissioners as new bodies under this Act, vesting in them as such new bodies the powers given by the local Acts as well as those given by this Act, and such commissioners in subsequently doing any act in the exercise of the powers originally conferred by their local Acts are acting under the Act, and consequently are entitled in respect of such act to any protection or privilege given by that Act to members of local authorities acting under its provisions. So held by the Court of Appeal (affirming the judgment

Note to Section 10. of WILLS, J., 17 Q. B. D. 139), *Lea v. Facey*, 19 Q. B. D. 352; 56 L. J. Q. B. 536; 58 L. T. (N.S.) 32; 35 W. R. 721; 52 J. P. 756.

The case of an improvement district becoming a borough is provided for by section 310, *post*.

Powers and duties of rural authorities.

11. In addition to the powers, rights, duties, capacities, liabilities and obligations exercisable by or attaching to a rural authority under this Act, every rural authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities and obligations within such district exercisable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same.

Upon the passing of the Factory and Workshop Act, 1878, this section was practically repealed; for the Bakehouse Regulation Act was repealed by that Act. It has been pointed out, however, in note (b) to section 10, *ante*, p. 29, that the control of local authorities over bakehouses has been partially restored by the Factory and Workshop Act, 1883. See the note, and see also the provisions of the Factory Acts in the Appendix.

A rural authority may also adopt the clauses of the Housing of the Working Classes Act, 1890, relating to working class lodging houses, under section 54 of that Act, *post*.

Vesting of property in local authorities.

12. From (a) and after the passing of this Act all such property, real and personal, including all interests, rights, and easements, in, to, and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any borough, or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians as the local authority of their district under this Act, subject to all debts, liabilities and obligations affecting the same property.

All debts, liabilities and obligations incurred by any authority whose powers, rights, duties, liabilities, capacities and obligations are under this Act exercisable by or attached to a local authority, may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same. (b)

(a) It must be remembered that by virtue of 35 & 36 Vict. c. 79, s. 9, the property referred to had been transferred, and such of it as still remains the property of the authorities mentioned, is therefore continued to be vested in them. But that clause only transferred to the sanitary authorities property applicable to the sanitary purposes thereby placed under the management of those authorities. Thus, if a borough included in a local Act district had been absorbed in an Improvement Act district, all the property of the town council did not pass, but only so much as related to the sanitary purposes. So, in the case of a parish which was a sewer authority, all the property of the parish did not pass, but only what belonged to the parish in connection with the sewers. "But for this enactment there would be a doubt as to whether the property which formerly belonged to the improvement commissioners continued to be theirs, or in what capacity it continued to be theirs, and the Act solves that difficulty by saying that henceforth such property shall be held by the body of commissioners as the local authority." Per WILLS, J., in *Lea v. Facey*, 17 Q. B. D. 143; and see the observations of the Court of Appeal in the same case, 19 Q. B. D. 352; 56 L. J. Q. B. 536; 58 L. T. (N.S.) 32; 35 W. R. 721; 52 J. P. 756.

(b) The urban or rural authority have the same legal answers to claims that the former authority had, and such others as would be open to them in claims of a like character against themselves, such as the Statute of Limitations. Note to
Section 12.

With regard to the liability of a local board in respect of a decree made against their predecessors, reference may be made to *Attorney-General v. Corporation of Birmingham*, 15 Ch. D. 423 ; 43 L. T. (N.S.) 77 ; 29 W. R. 127. In that case a decree was made in 1875 against the Corporation of Birmingham as the sanitary authority of Birmingham, granting a perpetual injunction to restrain them from allowing sewage to flow into a river, the injunction being suspended for five years to give the borough an opportunity to execute certain works. At the expiration of that period the plaintiffs desired to enforce the injunction, but in the meantime the Birmingham Tame and Rea District Drainage Board had succeeded to the rights and liabilities of the Corporation of Birmingham in respect of the sewage. It was held that the new board could not then be made parties to the original action. Thereupon an action was commenced against the new board, the plaintiffs claiming a declaration that they were entitled to same benefit of the decree as against the defendants, as if they had been defendants in the former suit. It was held that the new board were not made by the Public Health Act subject to any liabilities of their predecessors except those attaching under the Act, and were therefore not bound by a decree against them, and that, there being no allegation of any nuisance committed by the new board, the plaintiffs had no cause of action. *Attorney-General v. Birmingham Tame and Rea Drainage Board*, 17 Ch. D. 685 ; 50 L. J. Ch. 786 ; 44 L. T. (N.S.) 906 ; 29 W. R. 793 ; 46 J. P. 36.

But when a serious nuisance had admittedly been caused by the mode of dealing with sewage by a rural authority, the dissolution of the rural authority and the constitution, by order of the Local Government Board, of an urban sanitary authority over the district, with the rights, powers, duties, &c., of the old board, does not absolve the new board from liability to an injunction for continuing the nuisance without taking any effectual steps to remedy it. Eleven months having elapsed since the constitution of the new board, the operation of the injunction was suspended for two months only. *Taylor v. Friern Barnet Local Board*, W. N. (1885), p. 7.

PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.(a)

Section 13. **13.** All existing and future sewers within the district of a local authority, together with all buildings, works, materials, and things belonging thereto,

Sewers vested
in local
authority.

Except—

- (1.) Sewers made by any person^(b) for his own profit, or by any company for the profit of the shareholders ;^(c) and
- (2.) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land ;^(d) and
- (3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,^(e)

shall vest in^(f) and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.^(g)

(a) Note in section 4, *ante*, p. 18, the distinction between *sewers* and *drains*. A drain is a sewer within the meaning of this section as soon as more than one house has been connected with it. *Acton Local Board v. Batten*, 28 Ch. D. 283 ; 54 L. J. Ch. 251 ; 52 L. T. (N.S.) 17 ; 49 J. P. 17 ; *Pinnock v. Waterworth*, 51 J. P. 248 ; 3 T. L. R. 563 ; *Bateman v. Poplar District Board of Works* (No. 2), 37 Ch. D. 272 ; 57 L. J. Ch. 579 ; 58 L. T. (N.S.) 720 ; 36 W. R. 501 ; *Kirkheaton Local Board v. Beaumont*, 52 J. P. 68. A natural stream, supplied by natural and artificial drainage of cultivated soil, belonging to private individuals, was cleared out and partially widened and deepened by commissioners acting under a private Inclosure Act, powers being given to them to do so at the expense of the proprietors. In its passage to a public river, it passed through a town and received the drainage of a few inhabited houses. It was held that, assuming it to be a *sewer*, which was very doubtful, it came within the exceptions in this section (sub-section 2), and was not vested in the local board of health, so that they were not liable to cleanse and repair it. *Reg. v. Local Board of Godmanchester*, L. R. 1 Q. B. 328 ; 11 Jur. 63 ; 5 B. & S. 886, 936 ; 14 L. T. (N.S.) 104 ; 35 L. J. Q. B. 125 ; 30 J. P. 164. But where the sewage of certain houses drained into a sewer, and, after passing through the sewer was for a period of some years allowed to fall into an open watercourse, which in its turn flowed into a brook, DENMAN, J., held that under the circumstances of the case the open watercourse was a sewer which vested in the local authority under this section. *Wheatcraft v. Matlock Local Board*, 52 L. T. (N.S.) 356. And see *Kirkheaton v. Beaumont*, *supra* ; *Falconar v. Corporation of South Shields*, in C. A. ; The "Times," 8th February, 1895 ; 11 T. L. R. 223. From these cases it appears that the definition of a sewer in section 4 may include an open ditch receiving sewage.

A tidal fleet or watercourse, in which barges were floated alongside premises in the town of Lynn, was held not to be a sewer merely because sewage was discharged into it, and the local authority were, therefore, restrained from arching it over as a sewer vested in them. *Pentney v. Lynn Paving Commissioners*, 12 L. T. (N.S.) 818.

An iron pipe temporarily laid to carry off effluent water from sewage works was held to be a sewer in *Tottenham Local Board v. Button*, 2 T. L. R. 828. But a cesspool in a line of pipes forming a sewer is not part of the sewer. *Meador v. West Cowes Local Board*, *ante*, p. 19.

(b) This word, according to the definition in section 4, *ante*, p. 6, includes a corporation aggregate. It appears also to apply to a corporation sole. A sewer made by the owner of some only of the houses in a street not yet a highway, though made for the purpose of draining his own amongst other houses, is not a sewer made by a person "for his own profit" within the meaning of this section. *Acton Local Board v. Batten*, 28 Ch. D. 283; 54 L. J. Ch. 251; 52 L. T. (N.S.) 17; 49 J. P. 17. This decision was followed in *Pinnock v. Waterworth*, 51 J. P. 248; 3 T. L. R. 563. In that case MATHEW, J., said: "The builder had constructed a number of houses. He made a drain and a cesspool and connected them with the first house, and as he completed successive houses he continued the drain from one house to the other, carrying the cesspool forward, and, finally, when all the houses had been completed, there was a line of pipes connecting them with the cesspool. In time that cesspool became a nuisance. Now, was the line of pipes and the cesspool something made for the purpose of profit within the meaning of section 13? It could not be said to be so. If such pipes were to be excepted from the Act the operation of the Act would be narrowed down to the smallest possible point." In another case a piece of land was laid out for building by the owners, and a street laid out and a sewer made which drained the houses. A local board was afterwards formed. The sewer was sufficient as long as sewage could be discharged into the Thames, but when this was prohibited it became necessary to construct a new sewer to carry the sewage in a different direction. The local board having made a new sewer sought to charge the frontagers under section 150. It was held that the original sewer was not made by any person for his own profit, and, therefore, vested in the local board, who were bound to keep it in repair. *Bonella v. Twickenham Local Board*, 18 Q. B. D. 577; 56 L. T. (N.S.) 486; 35 W. R. 578; 56 L. J. M. C. 73; 51 J. P. 580. In the course of his judgment HUDDLESTON, B., said: "No doubt the sewer was made for the use of the owners of the houses, but the words of the section are, 'for his own profit,' not 'for his own use.' An illustration of how the exception might apply occurs to me. It might refer to the case of a person who was utilising sewage and made a sewer to conduct the sewage to works used for that purpose, or it might apply to a company formed for the purpose of making manure who might require to conduct the sewage to a particular place in the course of their business. I think the second exception in the same section bears out this view, for it applies to sewers for the purpose of draining, preserving or improving land under local or private Acts, or for irrigating land. This provision throws light on the word 'profit,' and goes to show that it is not the same as use. If the contention is right, no sewers would ever vest in the local board." This decision was affirmed in the Court of Appeal, 20 Q. B. D. 63; 57 L. J. M. C. 1; 36 W. R. 50; 58 L. T. (N.S.) 299; 52 J. P. 356.

In *Ferrand v. Hallas Land and Building Company* [1893], 2 Q. B. 135; 62 L. J. Q. B. 479; 69 L. T. (N.S.) 8; 41 W. R. 580; 57 J. P. 692; 4 R. 430, the plaintiff was the owner of land situate on both sides of a certain stream, and the defendants were owners of land near the stream, but situate higher up the stream than the plaintiff's land. The defendants erected on their land a row of sixty-nine cottages, and a long intercepting drain or sewer, with which each of the cottage drains was connected, the sewer being connected with the stream so that the drainage from the cottages passed down the drains into the sewer and so into the stream. The drains and sewer were constructed in pursuance of plans sanctioned by the local authority. It was held that the sewer was not made for the profit of the defendants' shareholders. And per LOPES, L.J.: "A sewer made for profit means, in my opinion, not a sewer made for the mere purpose of drainage, not a sewer made for the mere purpose of discharging matter not in any way to be utilised, but which it was essential to get rid of for sanitary purposes, but a sewer made for the purpose of realising a profit, above and beyond, and independent of any sanitary purpose. Such, for instance, as a sewer made to collect feculent matter with a view of utilising it for manure, or a sewer made for the purpose of carrying away surface or other water and using it for irrigation." Per A. L. SMITH, L.J. (by way of further illustration): "It will be noticed

**Note to
Section 13.**

that a sewer need not necessarily convey sewage matter in order to constitute it a sewer. It would be none the less a sewer within the Act of 1875 if it conveyed only rain or surface water. The draining off of rain or surface water, collected from different premises by different feeders into one main drain, would constitute that main drain a sewer within the meaning of the Act. In some manufacturing districts this is done, and the water so collected is passed on and distributed upon payment amongst different receivers. A sewer made for this purpose would, in my opinion, be within the exception." Again, in *Minehead Local Board v. Luttrell* [1894], 2 Ch. 178; 63 L. J. Ch. 497; 70 L. T. (N.S.) 446; 42 W. R. 667; 8 R. 379, the defendant, who was lord of the manor of M. and owner in fee of a large part of the town of M. in 1878, constructed at his own expense, and with the sanction of the local authority (where necessary), a system of sewerage for effectually draining the town, and he subsequently extended the system to new streets from time to time. The greater number of the houses in the town were connected with the system, and a voluntary sewage rate, varying in amount from year to year, was annually received by the defendant from the persons occupying such houses. The plaintiffs, as local authority, claimed a declaration that the sewers were vested in them, but it was held that the sewers were constructed by the defendant for his own profit. See also *Russell v. Knight*, cited in the notes to section 21, *post*, p. 52. In *Vowles v. Colmer* [1895], W. N. 42; 30 L. J. Notes, 163, the plaintiffs purchased six acres of land, which they laid out and developed as a building estate, on one side of which there was a roadway, and the plaintiffs, at their own expense, constructed a sewer in the soil of the moiety of the roadway adjoining the boundary of the estate. The building plots were disposed of from time to time, generally at fee farm rents, and on entering into their agreements with the purchasers the plaintiffs required a payment to be made for connecting the drainage system of the premises sold with the sewer. The defendant was the owner of a house on the other side of the roadway, opposite the plaintiff's building estate, and he claimed the right to connect the drains from his house with the sewer without paying the plaintiffs therefor. The plaintiffs sought an injunction, but ROMER, J. dismissed the action on the ground that *Ferrand v. Hallas Land and Building Company*, *ubi supra*, was not distinguishable without over-refinement.

The case of *Bateman v. Poplar District Board of Works*, 33 Ch. D. 360; 56 L. J. Ch. 149; 55 L. T. (N.S.) 374, was decided by the Court of Appeal with reference to provisions in the Metropolis Management Acts, which have no exact parallel in the Public Health Act, 1875. See, however, the provisions of 53 & 54 Vict. c. 59, s. 19, *post*. In *Bateman v. Poplar District Board of Works* (No. 2), 37 Ch. D. 272; 57 L. J. Ch. 579; 58 L. T. (N.S.) 720; 36 W. R. 501, NORTH, J., doubted whether the unlawful act of a stranger done without the consent of the owner of a drain could affect his ownership of the drain or the liability of the local authority by vesting the drain in them, and thus throwing the responsibility for it upon them; but he did not decide the point.

(c) The word *proprietors*, which existed in 11 & 12 Vict. c. 63, s. 43, and was somewhat indistinct in its signification, is here omitted.

(d) This purpose is not limited to irrigation under local or private Acts.

For an example of a sewer which falls within this exception, see *Reg. v. Local Board of Godmanchester*, *supra*, note (a).

(e) See further the saving contained in section 327, *post*.

(f) On these words in a private Act, JESSEL, M.R., said:—"This is not the case of a mere easement. The barrel of the sewer—that portion of the subsoil—vests in you (the local authority) under the section. . . . It was found under the old law, and it was sometimes held, that the sewer authorities (they were not called sewer authorities in those days) had only an easement, and it was found to be very inconvenient, and consequently in the modern Acts the property in the sewers has been vested in the sewer authorities. That is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement or right of sewerage or drainage, the absolute property in the sewer (which means not only the brick barrel or whatever it may be forming the sewer, but the whole interior of the sewer—that is, the whole of the space occupied by it) is now vested in the sewer authorities. And if the sewer is a large one, it amounts in substance to the whole of the subsoil, and that is absolutely vested in the corporation." Per JESSEL, M.R., in *Taylor v. Corporation of Oldham*, 4 Ch. D., at p. 411. See also as to the meaning of the words *vest in*, *Coverdale v. Charlton*, 4 Q. B. D. 104; *Rolls v. St. George's, Southwark*, 14 Ch. D. 785; and the cases cited upon the same words in the notes to section 149, *post*.

In *Attorney-General v. Guardians of Dorking*, 20 Ch. D., at p. 604, JESSEL,

M.R., said that the vesting of a sewer in a local authority gave them only a modified and limited right of ownership, and did not give them a right to stop up a sewer. But the vesting of the sewer in them gives them an interest in land within the meaning of section 68 of the Lands Clauses Act, 1845. Per Lord ESHER, M.R., in *Birkenhead (Mayor, &c., of) v. London and North-Western Railway Company*, 15 Q. B. D. 578; 55 L. J. Q. B. 48; 50 J. P. 84.

Note to
Section 13.
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The provisions of the section, that all existing and future sewers within the district of a local authority, subject to the exceptions therein mentioned, "shall vest in and be under the control of such local authority," does not make the sewers absolutely theirs so as to render them to all intents and purposes the same as if they were private owners of the sewers. An action was brought against a sanitary authority to restrain the pollution of a ditch running through the main street of a town past the plaintiff's land into the sea. The ditch was covered over as it passed through the town, but was afterwards an open stream, and had been for many years seriously polluted. The plaintiff claimed an injunction to restrain the defendants, as the owners of the covered part of the ditch, and as the sanitary authority of the district, from permitting any sewage or other noxious matter to come on to her lands or into her part of the ditch. In 1877, the attention of the defendants was called to the condition of the houses in two new streets, and they required the owners of those houses to improve the drains. The owners accordingly ran two drains down the two streets and made communications with the main sewer. These drains were made for the purpose of carrying off surface water, and were not connected with any privies, but in addition to the surface water the slops of the houses were allowed to be thrown down the drains. In 1885, in consequence of a complaint made to the defendants, notices were directed to be served upon the occupiers to divert all polluting matter from the sewer, and the inspector of nuisances was ordered to inspect all drains entering into the main sewer. The notices so served were all effective in causing an abatement of the nuisance except four. Subsequent directions of the defendants as to cleansing the sewer were duly carried out, the effect of which was to diminish the pollution of it to some extent. The defence was that the defendants had done everything in their power to prevent any nuisance from being occasioned to the plaintiff or her property, and that they were not responsible for the nuisance:—Held, that the defendants had been diligent, and had done all they could to abate the nuisance, and that it was almost inevitable that some prescriptive rights of drainage should have been acquired, with which the defendants had no authority to interfere:—Held, therefore, that the defendants had no right physically to disconnect the drains so as to abate the nuisance, and that the action could not be maintained. *Ogilvie v. Blything Union Rural Sanitary Authority*, 65 L. T. (N.S.) 338; affirmed in C. A., 67 L. T. (N.S.) 18. And see *Reg. v. Staines Local Board*, 60 L. T. (N.S.) 261; 53 J. P. 358; 5 T. L. R. 25, the facts of which are set out in the notes to section 17, *post*, p. 47.

(g) This is a new provision, rendered necessary to meet the action of local authorities in their neighbouring districts, under sections 28 and 285, as well as the case of special private Acts which provide for the sewerage of extensive districts.

It will be observed that this provision applies both to sewers already constructed at the time of the passing of the Act, and to sewers which may hereafter be constructed in the district of a local authority by any other authority.

14. Any local authority may purchase or otherwise acquire(a) from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings, works, materials or things, belonging thereto), within their district, and any person may sell or grant to such authority any such sewer right, or property belonging to him; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right, or property sold was subject to.

Power to
purchase
sewers.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right(b) to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same

Section 14. extent as he would or might have done if the purchase had not been made.

(a) These words are new, and enable the local authority to accept a gift of a sewer, as, for instance, where it was made for private profit but the landowner gives it to the local authority.

(b) There is no limit to the extent of this right. 11 & 12 Vict. c. 63, s. 44, applied only where a perpetual right had been acquired.

Maintenance
and making
of sewers.

15. Every (a) local authority shall keep in repair (b) all sewers belonging to them, and shall cause to be made (c) such sewers as may be necessary for effectually draining their district for the purposes of this Act.

(a) This section imposes duties upon the local authority, *i.e.*, upon both urban and rural authorities, and the neglect of these duties will be a default within the operation of section 299, *post*. This duty may be enforced by *mandamus*, but before applying for the writ it is necessary that a formal demand should have been made and refused. *In re Maidenhead Local Board*, 26 L. T. (o.s.) 104. And see *Ex parte Parsons*, 22 J. P. 68.

(b) Upon the corresponding enactment in 18 & 19 Vict. c. 121, s. 22, the Court of Queen's Bench held that the requisition of repair did not mean the reconstruction of a sewer originally imperfectly made, but the keeping of a sewer in proper repair. Hence, where a board of guardians were required by *mandamus* to put a sewer within their district into good and serviceable repair, it was held to be a good return that the sewer was defectively made and could not be repaired, or if repaired would create a nuisance. But reasonable improvements would be within the emergency of the writ. *Reg. v. Epsom Union*, 8 L. T. (n.s.) 383; 11 W. R. 593. For the purposes of repair, the local authority have an implied right of access, but that right is limited to such right as may be reasonably necessary for enabling the repair to be done. In a more recent case the plaintiffs, in 1843, under the authority of a local Act, constructed a sewer on land, part of which had been bought by the defendants, a railway company, but had not then been used for their works. Part of the remainder was bought by the defendants after the construction of the sewer, but no part of the land was the plaintiffs, or had ever been granted to them. The local Act not only authorised the plaintiffs to make the sewer, but vested it in them, with a duty to repair it, without, however, giving them any express right of access thereto. In 1863 the defendants, in exercise of the powers conferred upon them by their special Act, with which was incorporated the Railways Clauses Act, 1845, constructed an embankment over the sewer, which, though it made it less easy, did not prevent the plaintiffs getting access to the sewer in order to repair it. The plaintiffs being obliged afterwards to repair, and having incurred extra expense in doing so in consequence of the embankment, claimed compensation from the defendants under the Lands Clauses Act, 1845, s. 68, and the Railways Clauses Act, 1845, s. 6, for injuriously affecting the plaintiffs' interest in a sewer. It was held by the Court of Appeal that as a right of access to the sewer had not been expressly given by the local Act, but had to be implied, the right of access which ought to be implied was not any particular mode of access, but such only as was reasonably necessary for enabling the repair of the sewer to be done, and as that had not been prevented by the defendants' embankment, but only rendered less easy and convenient, the plaintiffs had no right to compensation. *Birkenhead (Mayor, &c., of) v. London and North Western Railway Company*, 15 Q. B. D. 572; 55 L. J. Q. B. 48; 50 J. P. 84.

In a case, as reported below, it was held that a local authority are liable for damages done by the bursting of a sewer, caused by defects in its original construction, and by their omission to take reasonable means to discover such defects; as they are under a legal duty to repair the sewer, and ought from time to time to inform themselves of its condition. *Fleming v. The Corporation of Manchester*, 44 L. T. (n.s.) 517; 45 J. P. 423. But this decision appears to have been reversed on appeal, on the ground that there was no evidence of negligence to go to the jury, and the action was dismissed without any new trial. See the "Times," 27th June, 1882. The duty imposed by this section is not an absolute duty, but only a duty to use all reasonable care and diligence to keep the sewers in a proper condition. See *Bateman v. Poplar District Board of*

Works (No. 2), 37 Ch. D. 272 ; 57 L. J. Ch. 379 ; 58 L. T. (N.S.) 720 ; 36 W. R. 501. For the facts of this case see the note to section 19, *post*, p. 50.

A water company under this statute laid a water pipe under a turnpike road, the soil of which was in K., the owner of the adjoining land. C. was employed by K. to make a tunnel under the road with consent of the road trustees, and in doing so was obstructed by water which had escaped from the pipe without anyone's knowledge. C. called upon the company to repair the pipe, which was done, but not until injury to the works had been suffered. It was held that C. had no action against the company in respect of injury to his contract with K., though K. might have had an action for injury to his land. *Cattle v. Stockton Waterworks Company*, 39 J. P. 791. This case may illustrate the corresponding liability of a local authority under the above section.

For other cases in which local authorities are liable in respect of the making and keeping of sewers, see the notes to section 19, *post*, p. 50, and the notes to section 265, *post*.

(c) Where the local authority have admittedly not discharged this obligation, it is not competent for them to exercise the powers conferred by sections 94 to 96, *post*, so as to evade the performance of this obligation, and, in effect, transfer it to those for whose protection the local authority exists. For instance, the respondent and others, owners of premises near a drain, from time to time connected their water closets with the drain, without the knowledge of the local authority. This drain had been an open drain into which drained surface water from a highway and sink-drainage from houses near it, but no watercloset drainage, and in 1863 it was covered up by the local authority, the expenses being paid by a special rate. The respondent's waterclosets had been connected with the drain for more than twenty years. The local authority had made no bye-laws or regulations for their district as to the mode in which communications between drains and sewers were to be made, nor had they carried out any system of drainage for their district, cesspools or earth closets being generally used by the inhabitants. The local authority having instituted proceedings against the respondent for the abatement of a nuisance caused at the place where the drain emptied itself into a certain ditch, the justices dismissed the complaint and on appeal by the local authority judgment was given for the respondent. *Fordom v. Parsons* [1894], 2 Q. B. 780 ; 64 L. J. M. C. 22 ; 58 J. P. 765 ; *S. C. sub. nom. Wycombe Union v. Parsons*, 71 L. T. (N.S.) 428 ; 10 R. 426.

This obligation of the local authority is enforceable by *mandamus*, but *mandamus* will not be granted where the local authority have honestly considered the matter of complaint and provided for it. If so, but they have made an error, the remedy is by appeal to the Local Government Board under section 299, *post*, and if on complaint to the Local Government Board, that Board, after due inquiry, declines to interfere, that is an additional reason for refusing a *mandamus*. *Reg. v. Tottenham Local Board*, 9 T. L. R. 414 ; 15 M. C. C. 225.

As regards the action of the authority, it must be observed that this section will not enable them to brick or arch over a watercourse containing pure water, with a view to its afterwards carrying sewage, for the Act does not authorise the commission of a nuisance. *Attorney-General v. Hackney Local Board*, L. R. 20 Eq. 626 ; 44 L. J. Ch. 545 ; 33 L. T. (N.S.) 244. See also *Pentney v. Lynn Paving Commissioners*, 12 L. T. (N.S.) 818. Nor may they construct a sewer which will cause a nuisance by its discharge. *Southampton and Itchin Bridge Company v. Southampton Local Board*, 8 E. & B. 801 ; 4 Jur. (N.S.) 1258 ; 28 L. J. Q. B. 41.

A local authority is liable in an action for damages caused by their negligence in making a sewer. Such injury does not merely give the person injured a claim for compensation under section 308, *post*, but also a right to damages. *Hall v. Corporation of Batley*, 47 L. J. Q. B. 148 ; 37 L. T. (N.S.) 710 ; 42 J. P. 151 ; and see *post*, section 308.

A manhole is part of the sewer, and may be made without purchasing land for the purpose, the owner of the land being entitled only to compensation for the damages arising from making it. *Swanston v. Twickenham Local Board*, 11 Ch. D. 838 ; 48 L. J. Ch. 623 ; 40 L. T. (N.S.) 734 ; 27 W. R. 924 ; 43 J. P. 380. If what is done is equivalent to taking the land, the owner will be entitled to the full value of the land by way of compensation. He will also be entitled to be compensated in respect of the lateral support which the sewer may require. Per JESSEL, M.R., *Roderick v. Aston Local Board*, 5 Ch. D. 328 ; 46 L. J. Ch. 802 ; 36 L. T. (N.S.) 328 ; 25 W. R. 403 ; 41 J. P. 516. And it was held that he was entitled to compensation for being deprived of the free power to work subjacent mines, but not for the risk of percolation into subjacent mines. *Reg. v. Corporation of Dudley*, 8 Q. B. D. 86 ; 51 L. J. Q. B. 121 ; 45 L. T.

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(N.S.) 733 ; 46 J. P. 340. But see now the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, *post*, which contains provisions for compensation to mine owners for the right of support to sanitary works.

Powers for
making
sewers.

16. Any local authority may carry any sewer through, across, or under any turnpike road, or any street^(a) or place laid out as or intended for a street, or under^(aa) any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier^(b) (if on the report of the surveyor it appears necessary),^(c) into, through or under^(d) any lands whatsoever within their district.^(e)

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority),^(f) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

(a) See the definition of this word in section 4, *ante*, p. 12. A local authority were held entitled to lay a sewer in a private road. *Taylor v. Corporation of Oldham*, 4 Ch. D. 395 ; 46 L. J. Ch. 105 ; 35 L. T. (N.S.) 696 ; 25 W. R. 303. And see *Maddock v. Wallasey Local Board*, 55 L. J. Q. B. 267 ; 50 J. P. 404, and *Hill v. Wallasey Local Board*, cited in the notes to section 57, *post*, p. 84.

Notice the words "through, across, or under." It is left to the discretion of the local authority whether they will carry the sewer above the turnpike road or under it, the Legislature assuming that they will carry it in such manner as not to interfere with the traffic. Per JESSEL, M.R., in *Roderick v. Aston Local Board*, *ante*, p. 37.

(aa) Not "into, through, or across." *Roderick v. Aston Local Board*, *supra*.

(b) These words were wanting in 11 & 12 Vict. c. 63, s. 45, and it was left vague to whom the notice was to be given. Here it is provided that notice is to be given to the owner (see section 4, *ante*, p. 6, for this definition), or to the occupier. The interposition of these words has given some awkwardness to the parenthesis ; but the report of the surveyor is not in relation to the notice. It refers to the necessity of passing through the lands. An injunction will be granted to restrain a local authority from constructing a sewer through private lands, on the ground that reasonable notice in writing has not been given, and that the surveyor has not reported the construction to be necessary as required by this section. *New River Company v. Ware Union Rural Sanitary Authority*, L. J. Notes of Cases, 1883, p. 20. And see *Lewis v. Weston-super-Mare Local Board*, *infra*.

As to the authentication of the notice, see sections 266, 267, *post*. A notice, specifying the object to be the construction of a sewer of certain dimensions, to enter at a certain spot and to go in an oblique direction from that spot without a map was held to be a reasonable one. *Cleckheaton I. S. H. Society v. Jackson*, 14 W. R. 950.

(c) In the case of *Derby (Earl of) v. Bury Commissioners*, L. R. 3 Ex. 121 ; L. R. 4 Ex. 225 ; 38 L. J. Ex. 100 ; 20 L. T. (N.S.) 927 ; 17 W. R. 772 ; 33 J. P. 424, the Court of Exchequer Chamber laid it down, that "the necessity for making a new sewer being ascertained as a matter of fact, it was for the local authority to exercise their judgment in what direction that new sewer should be made through the adjoining land, and so long as they exercise an honest discretion without misconduct or negligence, they are not liable to have their judgment overruled in a court of law."

The provisions of this section are extended to the laying of water mains by section 54, *post*, p. 81. In December, 1887, the surveyor of the defendants, an urban local authority, died. On the 11th of January, 1888, the defendants, by resolution, appointed A. P., a civil engineer in their employment, "surveyor to the board until a further permanent surveyor be appointed." On the 21st of March, 1888, A. P. reported to the defendants that it was "desirable and advisable" that their water main should be carried in a particular direction from one point to another, and that it would be "necessary" to lay it through land belonging to the plaintiff, which was within the district. This report was signed "your surveyor, A. P." Four days after its date X. Y. was duly appointed surveyor to the defendants, and A. P., who was a candidate

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for the office, was retained in their service as waterworks engineer. The report of the 21st March was considered and adopted by the board on the 11th of April, 1888, and in the following month a notice in pursuance thereof was served on the plaintiff that the defendants intended to carry their main through a part of his lands. Upon motion made in an action by the plaintiff for an injunction to restrain the defendants from so doing, it was held, first, that the word "necessary" must be construed as meaning "necessary for the efficient discharge of the duty in the way most for the benefit of the public." Secondly, that upon the words of section 16 of the Act the person to determine the necessity was the surveyor; and that if the court found that he had exercised his judgment and come to a conclusion in good faith, the court ought not to interfere, even although other courses were shown to be practicable by which the entry on private lands might be avoided; and, thirdly, that "the surveyor" mentioned in section 16 must, in the case of an urban authority, be the fit and proper person duly appointed to be the surveyor under section 189 of the Act, and no other; and that A. P. was not "the surveyor" of the defendants within the meaning of sections 16 and 189; and that, as the report on which the proceedings of the defendants was founded was not the report of "the surveyor," the plaintiff was entitled to an interlocutory injunction. *Lewis v. Weston-super-Mare Local Board*, 40 Ch. D. 55; 58 L. J. Ch. 39; 59 L. T. 769; 37 W. R. 121; 5 T. L. R. 1.

(d) Under this section a local board proceeded to carry a sewer across the plaintiff's pleasure grounds, on such a level that the bottom of the sewer would be only slightly below the surface, and a permanent embankment about six feet high would be made. It was held by the Court of Appeal, affirming the judgment of JESSEL, M.R., that the board was authorised to do so, for that the Act did not confine them to carrying a sewer underground. *Roderick v. Aston Local Board*, 5 Ch. D. 328; 46 L. J. Ch. 402; 36 L. T. (N.S.) 328; 25 W. R. 403; 41 J. P. 516. A local authority would, therefore, apparently be entitled to carry their sewer across a highway. If an owner of land refuses to allow a local authority to enter his lands for the purpose of making a sewer under this section, it seems that section 305 of this Act does not enable the local authority to obtain from a court of summary jurisdiction an order authorising such entry. Per COCKBURN, C.J., in *Lamacraft v. St. Thomas R. S. A.*, 42 L. T. (N.S.) 365; 44 J. P. 441; and see to the same effect per DENMAN, J., in *Wheatcroft v. Matlock Local Board*, 52 L. T. (N.S.) 356.

A local authority are liable in an action for damages, and may be restrained by injunction from proceeding under this section if the proposed sewer would cause a nuisance. *Lamacraft v. St. Thomas R. S. A.*, *supra*.

A temporary pipe to carry off effluent water from sewage works is a sewer within this provision: *Tottenham Local Board v. Button*, 2 T. L. R. 828.

(e) 11 & 12 Vict. c. 63, s. 45, did not contain these words. But notwithstanding the generality of the expression, it was held that the local board could not make sewers out of their district. *Haywood v. Lowndes*, 4 Drew. 454; 5 Jur. (N.S.) 185; 28 L. J. Ch. 400; 7 W. R. 279. This decision led to the passing of 24 & 25 Vict. c. 61, which contained the enactment in the next paragraph, and the provisions therein referred to, which are set out in sections 32—34, *post*, pp. 61—63.

Under the corresponding sections of the Metropolis Management Acts it was held that a sewer might be made without actually taking lands under the provisions of those Acts which enable lands to be taken, and that in cases where what was done was equivalent to the taking of lands, for the local authority were empowered to make a sewer subject only to making compensation. *North London Railway Company v. Metropolitan Board of Works*, 1 Johns. 405; 5 Jur. (N.S.) 1121; 28 L. J. Ch. 909; 23 J. P. 515; *Hughes v. Metropolitan Board of Works*, 4 L. T. (N.S.) 318; 9 W. R. 517; 25 J. P. 675.

In a case decided upon this Act the surveyor of a local board had reported (see the next section) that it was necessary to make a sewer through N's lands, whereupon the necessary steps were taken and authority to the surveyor given. N. obstructed the surveyor, and was summoned before justices for so doing, and he contended that proceedings ought first to have been taken to acquire the land under the Lands Clauses Act. It was held that this was no answer to the summons, as the land need not be so acquired before a sewer is laid in it. *Thornton v. Nutter*, 31 J. P. 419.

It may be observed here that though the local board may make the sewer, they do not, as it seems from *Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 3 C. P. 612; 4 C. P. 192; 38 L. J. C. P. 192; 19 L. T. (N.S.) 744, acquire any right against the owners of adjoining lands to a lateral support. This,

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therefore, must be purchased if it is considered to be requisite. Such a right of support might before 1883 have been gained against the owner of the lands in which the sewer is laid, and this might have been taken into account in estimating the compensation to which he is entitled. Per *JESSEL, M.R.*, in *Roderick v. Aston Local Board*, *supra*; and *Reg. v. Dudley*, *ante*, p. 37. But since the passing of the Public Health (Support of Sewers) Act, 1883, *post*, a local authority cannot, after the 25th August, 1883, acquire any right of support, vertical or lateral, as against the owner of mines, except as in that Act provided (section 4). It would appear, therefore, that in general the right or obligation of support should not be taken into account in estimating the compensation for laying a sewer in private lands, as such a right is not now conferred by enjoyment for any length of time, and may under the Act here referred to form the subject of future compensation.

As to the assessment of compensation, see *Colac (Ratepayers of) v. Summerfield* [1893], A. C. 187; 62 L. J. C. P. 64; 69 L. T. (N.S.) 769, and the cases cited in the notes to section 308, *post*.

(f) See sections 32—34, *post*, p. 61. These sections are also rendered applicable to the laying of water mains without the district by reference to this provision by section 54, *post*, even where the consent of the adjoining authority has been procured under section 285, *post*. See *Jones v. Conway and Colwyn Joint Water Supply Boards* [1893], 2 Ch. 603; 62 L. J. Ch. 767; 69 L. T. (N.S.) 265; 41 W. R. 616; 57 J. P. 501; 2 R. 504, affirming 2 R. 506 n.; 68 L. T. (N.S.) 744.

Sewage to be
purified before
being dis-
charged into
streams.

17. Nothing in this Act shall authorise any local authority to make or use any sewer, drain, or outfall, for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal, pond, or lake.

This clause formed a proviso to 24 & 25 Vict. c. 61, s. 4, and illustrates the note to section 1, on p. 1, *ante*. The meaning is that if the sewage or filthy water be duly purified in the manner described, it may be discharged into the stream, canal, lake, or pond. It is difficult to find any authority in the Act which purported to enable the local authority to do otherwise. This clause is, therefore, an enabling and not a prohibitory one.

The plaintiffs who were the owners of a mill and premises within the district of the defendants, and employed a considerable number of workmen, built water-closets for the accommodation of the workmen, and without giving to the defendants any notice of their intention so to do, connected the same by means of a drain with the defendants' sewer. The sewer was formerly an open watercourse, and it drained into a natural watercourse. Proceedings were taken against the defendants for fouling the last-mentioned watercourse, and an application for a *mandamus* to compel them to make a proper system of drainage was adjourned upon their undertaking to close the communication between the plaintiff's drain and their sewer, or to take proceedings against the plaintiffs under the Rivers Pollution Prevention Acts. The defendants gave to the plaintiffs formal notice of their intention to cut off the drain, and the plaintiffs brought an action to restrain them from so doing. It was held that section 21 of this Act conferred on the plaintiffs, as owners of premises within the defendants' district, the right to drain into the existing sewer, and that it lay on the defendants to see that the sewer was so arranged that it did not contravene section 17. *Ainley v. Kirkheaton Local Board*, 60 L. J. Ch. 734; 55 J. P. 230; 7 T. L. R. 323. *STIRLING, J.*, held that the duty is thrown upon the local authority, to make all necessary sewers, and that it is for them to see that the sewers so made do not convey any sewage water into any natural stream or watercourse until the sewage was freed from all excrementitious or foul or noxious matter—that is to say, that they are not prohibited from making a sewer, the natural effect of which would be to convey such sewage into a stream or watercourse, but before they use it they must take care that the sewage is free from the foul or noxious matter. He held also that the section affects not the individual owner, but the local authority, and that the right conferred by section 21 on an owner of premises to connect his drains with a sewer was an absolute right, and that it was for the local board to see that the sewer did not contravene section 17. And see *Ogilvie v. Blything Union*, 65 L. T. (N.S.) 388, affirmed in C. A., 67 L. T. (N.S.) 18, the facts of which are set out in

the notes to section 13, *ante*, p. 35. See *Kirkheaton Local Board v. Ainley* [1892], 2 Q. B. 274 ; 61 L. J. Q. B. 812 ; 67 L. T. (N.S.) 209 ; 41 W. R. 99 ; 57 J. P. 36 ; affirming 66 L. T. (N.S.) 340 ; 56 J. P. 374. Note to
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This is a convenient place for a more detailed statement of the liabilities of local authorities in exercising their powers of making sewers. The following are the principal cases decided upon the rights of private persons against local authorities for polluting streams by sewage. (The cases are for the most part arranged in chronological order.)

In *Oldacre v. Hunt*, 1 Jur. (N.S.) 785 ; 6 De G. M. & G. 376 ; 19 Beav. 485, a local board of health proposed to carry a sewer through certain fields into the River Avon at a particular spot. The owners of those fields which adjoined the river had watering places therein ; they had also a several fishery in the river, though they were not otherwise interested in the bed of it, and they had not given their consent to the works. The Master of the Rolls granted an injunction to prevent the board of health from proceeding with the sewer, and this injunction was confirmed by the Lords Justices on appeal, assisted by CRESSWELL and WILLIAMS, JJ. The opinion of the court was that the parties complaining were interested in the river by reason of their watering places, independently of their right to the fishery, which also appeared to the judges to be fairly included under the term *land*. In the case of *Attorney-General v. Luton Local Board*, 2 Jur. (N.S.) 180 ; 20 J. P. 163, it appeared that the local board carried the whole drainage of the town of Luton into the River Lea, which flowed through the land of the relator, who had a mill on its banks. It was not a public navigable river, and there had been a drainage into it of a few houses previous to 1848, but the works of the local board greatly increased the sewage, and polluted the water to such an extent that sheep could not be washed in it. It was held by Wood, V.C., that the local board could not justify their proceedings, and that as the relator was interested in the river, and had not given his consent, he was entitled to an injunction to restrain them from proceeding with their works. The Vice-Chancellor pointed out that if the owners of the houses erected before 1848 had any right to drain into the river so as to interfere with the plaintiff's rights as a riparian owner, such right could only be acquired by prescription, but the board of health being then (1856) quite a modern corporation, established since 1848, could have no such rights. The prescriptive right here referred to is merely a right as against individuals. It will be seen hereafter that there can be no prescriptive right to pollute a stream so as to cause a public nuisance. In *Manchester, Sheffield, and Lincolnshire Railway Company v. Workson Local Board*, 26 L. J. Ch. 345 ; 23 Beav. 198 ; 29 L. T. (O.S.) 6, the plaintiffs were owners of a canal, and they had a right to supply water to their canal out of such brooks, streams, and watercourses as were within 1,000 yards of such canal, and they had the exclusive right to the water in the canal. It was held that this power did not so far extend to rain and other surface water, which, being collected on a road, ran along an open gutter into the canal, as to preclude the local board from allowing it to fall through gratings into a sewer which they had made under the road. But it was also held that the board must be restrained from permitting sewage communications to be made between the adjoining houses and the sewer so long as the sewer should discharge itself into the canal. In *Rigby v. Mayor, &c., of Bristol*, 29 L. J. Ex. 359, BRAMWELL, B., said : " Suppose a person had, for twenty or thirty years, been in the habit of turning his sewer into a river or other natural stream, it is clear that no action would lie against him for so doing ; and why should not a corporation have the power of acquiring a similar right ? " There was not, however, in that case any suggestion that the pollution complained of amounted to a public nuisance, nor had the case any reference to the section above set out.

In *Attorney-General v. Corporation of Birmingham*, 4 K. & J. 528, it was held that public works ordered by Act of Parliament must be so executed as not to interfere with the private rights of individuals, and that in deciding on the right of a single proprietor to an injunction to restrain such interference, the circumstance that a vast population will suffer (*e.g.*, by remaining undrained) unless his rights are invaded, is one which the court cannot take into consideration. The defendants were bound by a local Act, incorporating the Towns Improvement Clauses Act, 1847, effectually to drain the town. It was held that they were not justified in so carrying on their operations for this purpose as to drive away fish and prevent cattle from drinking the water of a river at a part seven miles below the town, where it belonged to the plaintiff. It was held also, that assuming the inhabitants of Birmingham to have had before their Act a right to drain their houses into the river, this circumstance would not authorise the defendants in discharging their sewage in such a manner as

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to subject the plaintiff to the inconvenience of which he now complained. And it was further held, that although the plaintiff had submitted to the injury for nearly four years, trusting to the assurance of the council that they were carrying out a scheme of sewage by which eventually the evil would be removed, he was not precluded on the ground of laches from now applying for an injunction, the rule in such cases being that the mere prospect of injury does not give a right to this relief. In *Bidder v. Croydon Local Board*, 6 L. T. (N.S.) 778, the defendants had caused the sewage of the town to be conveyed into the river Wandle. The sewage had not been completely deodorized before coming in contact with the river, and had so polluted the stream passing the plaintiff's property as to kill the fish therein, and otherwise cause a nuisance. It was held that the plaintiff was entitled to an injunction to restrain the further pollution of the water. The case of *Attorney-General v. Metropolitan Board of Works*, 9 L. T. (N.S.) 139, had reference to the Acts incorporating that body; it was held that these Acts did not empower them to create a nuisance by polluting a stream. *Sutcliffe v. Booth*, 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037; 27 J. P. 613, was an action by one riparian proprietor against another, and is only mentioned here in its order as deciding that a watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream. (This case was considered and approved in *Roberts v. Richards*, 44 L. T. (N.S.) 271; 50 L. J. Ch. 297; in C. A. 51 L. J. Ch. 944.) In *Cater v. Lewisham Board of Works*, 34 L. J. Q. B. 74; 5 B. & S. 115; 13 L. T. (N.S.) 212, the plaintiff was the owner of land through which a river called the Poole river flowed, such land being beyond the defendants' district. The defendants executed drainage works within their district, by means of which sewage was conveyed into a stream which flowed into the Poole river. The sewage had for many years been carried into the stream, but only so as to pollute the water in an inappreciable degree; while the result of the defendants' works was to do substantial injury to the plaintiff. It was held by the Exchequer Chamber that the plaintiff was entitled to bring the action, and was not precluded from so doing by the clauses of the Metropolis Management Acts, which give persons who sustain damage the right to compensation, for they were not justified in causing a nuisance. In *Attorney-General v. Mayor, &c., of Kingston-on-Thames*, 34 L. J. Ch. 481; 12 L. T. (N.S.) 665; 11 Jur. (N.S.) 596; 13 W. R. 888; 29 J. P. 515, the defendants adopted a new scheme of drainage, whereby a largely increased amount of sewage would be poured into the Thames. The Court refused, however, to grant an injunction on the ground that there was no evidence of the actual existence or immediate probability of a nuisance, and in general an injunction is granted only when there is some actual damage or imminent danger of damage. In *Goldsmid v. Tunbridge Wells Commissioners*, L. R. 1 Ch. 352; 35 L. J. Ch. 382; 14 L. T. (N.S.) 154; 14 W. R. 562; 12 Jur. (N.S.) 308; 30 J. P. 419, the sewage of a town had for many years been drained by commissioners acting under a local Act into a stream passing through the plaintiff's land which was beyond their district, without perceptibly polluting it. But for some years before the filing of the bill, in consequence of the increase of the town, the stream became perceptibly polluted, and continued to increase in impurity. The court granted an injunction. They held on the facts that no prescriptive right had been gained, but that assuming that such right could be acquired of draining the sewage into the stream to the injury of the plaintiff, it could only be acquired by the continuance of a perceptible amount of injury for twenty years. They further held that although the fact of prospective nuisance is not in itself a ground for the interference of the court, yet if some degree of present nuisance exists the court will take into account its probable continuance and increase. Upon the subject of prescriptive right, TURNER, L.J., said: "I assume, but without giving any opinion on the point, that such a right might well be acquired, but then I think that it could be acquired only by a continuance of the discharge of sewage prejudicially affecting the estate at least, to some extent, for the period of twenty years." In *Fielden v. Corporation of Blackburn*, W. N. 1866, p. 256, the plaintiff was tenant for life of an estate through which the river Darwen flowed. Three miles above the plaintiff's land the defendants caused the sewage of Blackburn to be discharged into a tributary of the Darwen, causing the stream to be polluted. The court granted an injunction on the 25th June, to take effect from the 2nd November following. A canal company was authorised by statute to draw water from a beck for the use of their canal. The water in the beck became polluted by the reception of drainage, and the canal consequently became very offensive. The company and the lessees were indicted for a nuisance and convicted (see 34 L. J.

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Q. B. 191 ; 6 B. & S. 631). Wood, V.C., granted an injunction to restrain the company from continuing to draw the polluted water from the beck. *Attorney-General v. Proprietors of the Bradford Canal*, L. R. 2 Eq. 71; 35 L. J. Ch. 619; 14 L. T. (N.S.) 248; 15 L. T. (N.S.) 9. In the case of *Attorney-General v. Richmond*, L. R. 2 Eq. 306; 35 L. J. Ch. 597; 14 L. T. (N.S.) 398; 12 Jur. (N.S.) 554; 14 W. R. 686; 30 J. P. 708, the defendants were a highway board, and were the local authority for carrying out the provisions of the Nuisances Removal Acts. The court restrained them from allowing any fresh communications to be made with a sewer constructed by their predecessors in office, which occasioned a nuisance to the inhabitants of the adjoining parish by draining into a stream flowing through such parish, although from the limited nature of their powers no order could be made against the board which would have the effect of compelling them to abate the nuisance altogether by stopping up the sewer and ceasing to drain into the stream. *Crossley v. Lightowler*, L. R. 2 Ch. 478; 30 L. J. Ch. 584; 16 L. T. (N.S.) 438, was an action between riparian owners, in which several important points were decided. It was held that where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably enlarged to the damage of other people. The fact that a stream is fouled by others is not a defence to a suit to restrain the fouling by one. The mere suspension of the exercise of a prescriptive right is not sufficient to destroy the right without some evidence of an intention to abandon it; but where dye-works had not been used for more than twenty years, and had been allowed to go to ruin, it was held that any right of fouling a stream attached to them was lost. The owner of land on the banks of a river can maintain a suit to restrain the fouling of the water of the river without showing that the fouling is actually injurious to him. C. wishing to prevent the water of a river from being fouled by some dye-works, purchased from the owners of the dye-works a piece of land on the banks of the river without communicating to them his object. It was held that in the absence of any express reservation by the owners of the dye-works of the right of fouling, C. could maintain a suit to restrain it. In *Lillywhite v. Trimmer*, 36 L. J. Ch. 525; 16 L. T. (N.S.) 318, the plaintiff was the owner of a mill and premises situate on the river Wey, below the town of Alton, the local board of which caused the sewage of the town to pass into the river about a mile and a half above the plaintiff's premises. The plaintiff sought to restrain the board from so doing, alleging that he and his family suffered materially in health and otherwise by the nauseous odours created by the sewage, and that the water of the river, which prior to the construction of the sewage works was a pure stream, had been rendered totally unfit for agricultural and domestic purposes. MALINS, V.C., found that upon the balance of the evidence there was no case for an injunction, and dismissed the bill without costs. He laid down as a settled rule of law that where a work, though of great public importance, can only be effected by interfering with private rights, the private rights must prevail, and the public work must be carried out as best it can without such interference (following *Attorney-General v. Birmingham*, *supra*); but where a great public object is to be attained, such as the drainage of a town, the court should not unnecessarily put any difficulty in the way of carrying it into effect. He held further that in considering questions of nuisance the court must have regard to the extent of the nuisance and to the balance of convenience, and if the extent of the inconvenience sustained is trifling, and such as may readily be compensated by money, the right of parties creating the nuisance must not be interfered with when the object which they seek to attain is of considerable importance, and that the court should not interfere by injunction to prevent a nuisance in cases in which the injury was temporary and trifling, though it ought to do so in cases when it was permanent and serious. In *Attorney-General v. Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146; 38 L. J. Ch. 265; 19 L. T. (N.S.) 708; 33 J. P. 196, it was held that when a plaintiff had proved his right to an injunction against a nuisance, it was no part of the duty of the court to inquire in what way the defendant could best remove it. The plaintiff is entitled to an injunction at once, unless the removal of the injury is physically impossible; and it is the duty of the defendant to find his own way out of the difficulty, whatever inconvenience or expense it may put him to. But when the difficulty of removing the nuisance is great, the court will suspend the operation of the injunction for a time, with liberty to the defendant to apply for an extension of time. An information was filed at the relation of a local board, praying for an injunction to restrain the visiting justices of a county lunatic asylum from allowing the sewage from the asylum to pollute a certain stream. The facts of the pollution of the stream existing, and being attributable in part to the sewage of the asylum being proved, the court granted an injunction, but suspended its operation

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for three months to enable the defendants to make the necessary arrangements, with liberty to the defendants to apply for an extension of time. The court expressed an opinion that if a public body, which had powers given it by statute for the performance of a particular object, exercised its powers so as to injure the property of others, it was responsible for the injury, unless the act done was absolutely necessary for the performance of the object of the statute; and that it was no answer to an information at the relation of a local board to abate a nuisance arising from sewage, that the board had power itself to remedy the evil by making sewers, for it was the duty of the board to prevent a nuisance arising in its district, instead of putting the ratepayers to the expense of additional works. By a local Act for the improvement of Leeds, it was provided that the clauses of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), as to making and maintaining public sewers and the drainage of houses should be incorporated with and form part of the Act, except in so far as they were inconsistent with it, or expressly varied or excepted. By the local Act the corporation were authorised to construct main sewers to receive the sewage of the town and to convey the same into the river Aire. It was held that the power to drain into the river was controlled by the 10 & 11 Vict. c. 34, s. 107, which forbade the commission of a nuisance; that though the river Aire was polluted before it received the drainage of Leeds, the landowners on the banks were entitled to restrain the further pollution; and that though the sewers had been completed and in operation for sixteen years before proceedings were taken, the court would interfere at the suit of the landowners. *Attorney-General v. Corporation of Leeds*, L. R. 5 Ch. 583; 39 L. J. Ch. 254; 22 L. T. (N.S.) 330; 34 J. P. 708. In *Attorney-General v. Gee*, L. R. 10 Eq. 131; 23 L. T. (N.S.) 299; 34 J. P. 596, a bill and information filed to restrain a local board from discharging sewage into a river, were dismissed with costs on the ground that the injury proved was trifling. In this case MALINS, V.C., followed his previous judgment in *Lillywhite v. Trimmer*, *supra*. In *North Staffordshire Railway Company v. Tunstall*, 39 L. J. Ch. 131, the council of a borough acting as a local board constructed a sewage system, which resulted in a gradually increasing nuisance to the plaintiffs and the public generally. It being represented on their behalf that the evil could only be dealt with effectually by a comprehensive scheme, and that no such scheme could prudently be adopted pending a parliamentary inquiry into the whole subject, the court granted an immediate injunction against any extension of the system, and restrained the continuance of the existing nuisance from and after the expiration of one year from the filing of the bill. In *Holt v. Corporation of Rochdale*, L. R. 10 Eq. 354; 39 L. J. Ch. 761; 23 L. T. (N.S.) 43; 35 J. P. 6, a local Act provided that the corporation should not cause any new sewer to open or drain into the river Roche at any point above the town mill weir. They had enlarged and deepened an old sewer, and an injunction was granted to restrain them from causing or permitting any sewer to be opened into the new sewer, or any other new sewer to open or drain into the river above the weir. From this and other cases already mentioned where authority has been given to discharge sewage into streams, it will be seen that it is necessary to enquire whether the local Act giving such authority does not incorporate the provisions of this or some other Act, from which it must be inferred that the discharge contemplated was to be such as would not cause the pollution of the streams. In the absence of some such provisions, however, the Act may give a positive authority to discharge sewage into a stream, and the effect of such a statutory authority is illustrated in the case of *Lea Conservancy Board v. Mayor, &c., of Hertford*, 48 J. P. 628; 1 C. & E. 299. In that case the town of Hertford had long drained into the river Lea, and a company obtained a local Act to make a sewer and intercept the sewage and purify it, and then discharge the effluent water into the river Lea, all the inhabitants of Hertford being at the same time prohibited from draining direct into the river. The Act provided that the company should not discharge sewage water into the Lea until after being purified by the best known process. It was held that the statutory provisions superseded all common law rights; that the company were entitled to discharge the effluent water after being purified by the best process; and that no action lay against the company for polluting the river, though that process was still imperfect.

In *Attorney-General v. Cockermouth Local Board*, L. R. 18 Eq. 172; 44 L. J. Ch. 118; 30 L. T. (N.S.) 590; 22 W. R. 619; 38 J. P. 660, an injunction was granted against a local board for polluting a river on the information of the Attorney-General without proof

of injury to the public; but a bill filed by a local board, whose waterworks were supplied from the river eight miles further down, was dismissed with costs in the absence of proof of nuisance or damage.

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In *Attorney-General v. Corporation of Barnsley*, W. N. 1874, p. 37, JAMES, L.J., said there could be no prescriptive right to create a public nuisance by fouling a river. (This is the general rule of law with regard to a public nuisance. See *R. v. Cross*, 3 Camp. 224.) An injunction to restrain the pollution of the river Trent was granted in *Attorney-General v. Tunstall Local Board*, W. N. 1875, p. 66. In the case of a public nuisance the Attorney-General is justified in taking proceedings at the relation of any person, whether residing near the nuisance or not, and whether interested in the property on which the nuisance exists or not. A public corporate body though not formed for the acquisition of gain and making no profit is liable to pay damages in respect of injury caused by its negligence. The Attorney-General and the owner of a canal filed an information and bill against a municipal corporation to restrain them from permitting sewage to be discharged into the canal, and for an enquiry as to damages. It was held that the Attorney-General was justified in taking proceedings at the relation of the plaintiff, and that the plaintiff was entitled to an injunction and an inquiry as to damages, although he had permitted an obstruction to remain in the canal, whereby the sewage was prevented from being carried away by the flow of the water. *Attorney-General v. Mayor, &c., of Basingstoke*, 24 W. R. 817. By the Rules of the Supreme Court, O. 36, r. 58, where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the date of assessment. The plaintiff brought an action against the defendants as rural sanitary authority for permitting sewage to fall into and pollute a stream running through the plaintiff's land, and he obtained judgment for a perpetual injunction and for damages. The defendants, however, continued to pollute the stream, and three years after the judgment the chief clerk assessed the damages carrying the assessment down to the date of his certificate:—Held, that there was a continuing cause of action within the meaning of the rule, and that the damages had been rightly assessed. *Hole v. Chard Union* [1894], 1 Ch. 293; 63 L. J. Ch. 469; 70 L. T. (N.S.) 52; 7 R. 84.

As to when an injunction will be granted as distinguished from an award of damages, see *Pennington v. Brinsop Hall Coal Company*, 25 W. R. 874; 5 Ch. D. 769; 37 L. T. (N.S.) 149; 41 J. P. 758. As to the measure of damages, see *Tatton v. Staffordshire Potteries Waterworks Company*, 44 J. P. 106. And as to when a *quia timet* action will lie to restrain an apprehended injury before actual damage has been done, see *Fletcher v. Bealey*, 28 Ch. D. 688; 54 L. J. Ch. 424; 52 L. T. (N.S.) 541; 33 W. R. 745.

In *Blackburne v. Somers*, 5 L. R. Ir. 1, it was held that there can be no prescriptive right to pollute a stream by the discharge of sewage in such a manner and to such an extent as to be injurious to public health; that even assuming that a prescriptive right to foul a stream with sewage can be acquired, such right must be restricted to the limits of it when the period of prescription commenced; that if the pollution be substantially increased, whether gradually or suddenly, the court will interfere by injunction to prevent the wrongful excess, and that if it be impossible to separate the illegal excess from the legal user, the wrongdoer must bear the consequences of any restriction necessary to prevent the excess, even if it unavoidably extends to a total prohibition of the user. This decision was followed in *Traill v. McAlister*, 25 L. R. Ir. 524.

A riparian owner is entitled to the use of the water of the stream in its pure and original condition; and if the water becomes fouled by the combined acts of the proprietors higher up the stream, he is entitled to proceed against each of them separately, and such proprietor cannot set up by way of defence that the damage done by him individually is inappreciable. *Blair v. Deakin*, W. N. [1887] 148; 57 L. T. (N.S.) 522; 52 J. P. 327. And see *Nixon v. Tynemouth Union Rural Sanitary Authority*, 52 J. P. 504. But in every case there must be some appreciable nuisance caused, either by the defendant alone, or by the defendant with others. *Ridge v. Midland Railway Company*, 53 J. P. 55.

From 1832 to 1877, the refuse of a fellmongery, and the washings of dyes used in a coloured rag manufactory, had been discharged into a watercourse, which was an arterial drainage work within the jurisdiction of drainage commissioners. In 1878, the fellmongery was abandoned, and the manufacture of leather boards substituted at the same factory. The pollution caused by the discharge of the refuse of the leather board manufactory was less in degree than that caused by the fellmongery. The

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drainage commissioners convicted the owners of the leather board factory under a section of a local Act of polluting the stream, and this conviction was affirmed on appeal to the quarter sessions:—Held, that the conviction must be confirmed, for even if the factory owners had a prescriptive right to foul the stream, it was as fell-mongers, and not as leather board manufacturers; and that there was no authority for holding that the variation of the user, although it cast no increased, but even a less, burden on the servient tenement, enabled the factory owners to substitute a business of a totally different kind to that originally carried on by them, and at the same time to maintain their original prescriptive right to pollute the watercourse even if such right did exist. *Clarke v. Somersetshire Drainage Commissioners*, 57 L. J. M. C. 96; 59 L. T. (N.S.) 670; 36 W. R. 890; 52 J. P. 308n.

An important distinction has been drawn between cases where the nuisance has been created or increased by the acts of the local authority and where it exists independently of their acts, though they may have neglected to provide a proper system of sewage. In *Glossop v. Heston and Isleworth Local Board*, 12 Ch. D. 102; 49 L. J. Ch. 89; 40 L. T. (N.S.) 736; 44 J. P. 36, the defendants were a local board constituted in November, 1875, under the Public Health Act, 1875. The plaintiff complained that for some time before and since the defendants became the sanitary authority, sewage was allowed to fall into a stream passing near his residence so as to pollute it and cause a nuisance to him. It was held that, assuming an actionable nuisance to exist, the defendants were not liable in an action for an injunction and damages as they had themselves done no act to create or increase the nuisance. And it was laid down that a local board acting under the Public Health Act, 1875, causing a nuisance by any act which, independently of the statute would have given a cause of action to any person, may be made liable in damages or be restrained by injunction unless they can show a justification under the powers of the statute. But if they do not act themselves to cause a nuisance, but neglect to perform their duty of providing a satisfactory and healthy system of drainage, it is no ground of action by an individual for damages or an injunction, but the remedy is by prerogative writ of *mandamus*. This decision was followed in *Attorney-General v. Guardians of Dorking Union*, 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. (N.S.) 573; 30 W. R. 579. In that case there was an old sewer which discharged into a stream, and a number of persons had acquired prescriptive rights to send their sewage into it. In addition to these persons there were others who from time to time sent their sewage into the sewer, so that the total amount of sewage gradually increased. The local board had done nothing in respect of this sewer, but it appeared that they had endeavoured, though without success, to find means for disposing of the sewage of their district. Under these circumstances it was held that as the local board had not themselves constructed the sewer, but had only permitted it to be used as formerly by the inhabitants, they were not doing any act which could be restrained under the Public Health Act or the Rivers Pollution Prevention Act, 1876. (But see now the Rivers Pollution Prevention Act, 1893, 56 & 57 Vict. c. 31, *post*, and *West Riding County Council v. Holmfirth Urban Sanitary Authority* [1894], 2 Q. B. 842; 63 L. J. Q. B. 485; 71 L. T. (N.S.) 217; 59 J. P. 213; 9 R. 462; where it was held that the grounds upon which the foregoing cases were decided did not apply to proceedings in the county court under the Rivers Pollution Prevention Acts.) Had it appeared in the *Dorking Case* that the defendants were neglecting their duty in providing a sufficient sanitary scheme for their district, an aggrieved landowner would have had his remedy by *mandamus*. See also *Ogilvie v. Blything Union*, 67 L. T. (N.S.) 18. And see *Attorney-General v. Acton Local Board*, 22 Ch. D. 221; 52 L. J. Ch. 108. But where by agreement between a person and the local board, such person was allowed to insert a pipe from his house in order to carry away rain water into a brook, but afterwards such person without the leave of the board sent sewage through the pipe, an injunction was granted against the board on the ground that they had power to stop the drain from being used except according to the agreement, and that they could do so without causing inconvenience to other persons. *PEARSON, J., Charles v. Finchley Local Board*, 23 Ch. D. 767; 48 L. T. (N.S.) 569; 52 L. J. Ch. 554; 31 W. R. 717; 47 J. P. 791.

A detached portion of the parish of C. had no separate main drainage system, but certain houses therein were drained by means of pipes carrying the sewage into cesspools, the overflow pipes from which communicated with main pipes within such detached portion. The drainage of the houses, including such communications, was constructed with the sanction of the C. vestry, as the local authority under the Metropolis Local Management Act, 1855. The main pipes communicated with water-courses within the adjoining district of the F. local board, and the sewage from the

cesspools passed through the main pipes into the watercourses, and caused a nuisance in such adjoining district. The F. local board brought an information and action (to which the owners and occupiers of the houses were not parties) against the C. vestry, for an injunction to restrain them from permitting, authorising, or directing, any sewage to pass from the detached portion of C. into the watercourse, so as to cause a nuisance :—Held, following the opinions expressed in *Attorney-General v. Guardians of Union of Dorking*, 20 Ch. D. 595, 606 ; *Attorney-General v. Acton Local Board*, 22 Ch. D. 221, 232 ; and *Charles v. Finchley Local Board*, 23 Ch. D. 767, 777, that the C. vestry could not stop up the communications which they had sanctioned :—Held, (b) that inasmuch as the cesspools and drains were acting properly *qua* cesspools and drains, no proceedings could be successfully taken by the C. vestry against the owners or occupiers of the houses, under section 85 of the Metropolis Local Management Act, 1855 ; and that, as the cause and effect of the nuisance were not both within the area of the jurisdiction of the C. vestry, it was doubtful whether proceedings could be taken by them against the owners or occupiers of the houses under the Nuisances Removal Act, 1855 :—Held, (c) that, assuming the C. vestry could take proceedings, under the Metropolis Local Management Act, 1855, or the Nuisances Removal Act, 1855, *Attorney-General v. Dorking Union*, 20 Ch. D. 595, 609, was an authority that the vestry could not be compelled by injunction to take such proceedings :—Held, (d) on the authority of *Glossop v. Heston and Isleworth Local Board*, 12 Ch. D. 102, that it was not ground for an injunction that the C. vestry were not exercising or performing their other statutory powers and duties :—Held, therefore, on the C. vestry undertaking not to sanction communications in future between houses within the detached portion of their parish and the main pipes therein until further order, or without the consent of the F. local board, that the claim for an injunction failed. *Attorney-General v. Clerkenwell Vestry* [1891], 3 Ch. 527 ; 60 L. J. Ch. 788 ; 65 L. T. (n.s.) 312 ; 40 W. R. 185.

A local board have only a qualified property in the sewers within their district, and cannot prevent persons, who have acquired a prescriptive right to use them, from so doing unless they provide other sewers equally effectual. Where a local board have not themselves constructed sewers which are a nuisance, but only permitted them to be used by inhabitants who have acquired a prescriptive right to use them, the local board do not “cause or suffer” sewage to flow into the Thames within the meaning of section 64 of the Thames Navigation Act, 1866, and cannot be convicted of a misdemeanor under that Act. *Reg. v. Staines Local Board*, 60 L. T. (n.s.) 261 ; 53 J. P. 358 ; 5 T. L. R. 25.

A bill filed in 1868 prayed an injunction to restrain a local board of health from causing or permitting any sewage to pass into a certain brook, so as to be a nuisance. An answer was put in which did not in terms suggest any doubt as to the jurisdiction. In June, 1871, a motion was made for an injunction, and the court granted an interlocutory injunction in November, 1872. After various proceedings in February, 1889, a supplemental writ was issued by leave of the court, and a statement of claim was delivered asking for an injunction and also damages, including such as had been occasioned by the failure of the local board to comply with the interlocutory injunction. At the trial of the action, in July, 1890, KAY, J., decided that the defendants had practically abated the nuisance to such an extent that it would not be necessary to continue the injunction ; but his lordship was of opinion that certain moneys ought to be paid by the defendants to the plaintiffs. The objection was, however, taken that the court had no jurisdiction ; that the action and suit were altogether improper ; and that the only remedy was by *mandamus* :—Held, that if the objection that the proper remedy was by *mandamus*, and not injunction, might originally have prevailed, the defendants ought not to be allowed to raise that objection now ; and that the case must be dealt with as if the defendants had deliberately waived any objection on this ground :—Held, also, applying the principle that, where there is jurisdiction to grant an injunction, damages may be given in lieu for injury, the injunction would not be continued ; but that there must be judgment against the defendants for the moneys found to be due from them to the plaintiffs at the trial. *Warwick and Birmingham Canal Navigation Company v. Burman*, 63 L. T. (n.s.) 670.

In the case of *Manchester, Sheffield, and Lincolnshire Railway Company v. Workson Board of Health*, 26 L. J. Ch. 345 ; 23 Beav. 198 ; 3 Jur. (n.s.) 304, it was held that a local board of health could not justify the making of a sewer which would have the effect of polluting an existing canal belonging to the complainants, and, therefore, the board were restrained from allowing the house drainage to communicate with a main sewer which ran into the canal. But it is to be noticed that a local authority cannot

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stop up a drain which they have once authorised to communicate with their sewer. *Attorney-General v. Richmond*, *supra*, *ante*; *Attorney-General v. Guardians of Dorking*; *Attorney-General v. Acton Local Board*, *supra*. And see the notes to the next section.

In *Smith v. Smith*, L. R. 20 Eq. 500; 44 L. J. Ch. 632; 32 L. T. (N.S.) 787; 23 W. R. 771, JESSEL, M.R., pointed out that if a nuisance was proved to exist, the court would not hesitate to grant a mandatory injunction. The injunction in such a case was said by NORTH, J., in *Taylor v. East Barnes Valley Local Board*, 1 T. L. R., p. 257, to be a matter of course. For the form of injunction, see *Attorney-General v. Halifax*, 17 W. R. 1088; 39 L. J. Ch. 129; *North Staffordshire Railway Company v. Tunstall*, *supra*, and *Lingwood v. Stowmarket Paper Company*, L. R. 1 Eq. 77; 13 L. T. (N.S.) 540; 11 Jur. (N.S.) 993.

With regard to the enforcing of an injunction reference may be made to *Attorney-General v. Mayor, &c., of Birmingham*, 24 L. T. (N.S.) 224. There an information to restrain a nuisance was filed nine months before the hearing, and up to the hearing no steps had been taken to abate the nuisance. Under the circumstances the court granted a perpetual injunction, and refused to suspend it for more than six months, with liberty for the defendants to apply for an extension of the time if they could show that they had used due diligence in the meantime to abate the nuisance.

Notice of action is not necessary before taking proceedings against a local board for an injunction to restrain them from polluting a stream. *Attorney-General v. Hackney District Board*, L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. (N.S.) 244.

In *Spokes v. Banbury Local Board*, L. R. 1 Eq. 42; 35 L. J. Ch. 105; 13 L. T. (N.S.) 428; 30 J. P. 54, an injunction was granted to restrain the pollution of a stream, execution of the order being suspended from the 6th March to the 1st July. The defendants did not obey, alleging that they had not yet discovered means of deodorising the sewage, and that compliance was practically impossible without stopping the drainage of the town. It was held that there had been gross and wilful contempt, and a sequestration was ordered to issue, which order was affirmed on appeal (13 L. T. (N.S.) 453; 11 Jur. (N.S.) 1010). A motion for a sequestration against a local board will be granted of course, but not an application to commit the members personally. *Sutton v. Barnet Local Board*, W. N. (1877), p. 167; and see *Attorney-General v. Walthamstow*, W. N. (1878), p. 90. An injunction to restrain the defendants from polluting a stream was granted in January, 1885, with a suspension of the order for three months, which the court in April refused to extend; on motion by the plaintiff, under R. S. C., Order 42, r. 31, for sequestration, it was held that Order 41, r. 5, requiring service of a copy of the order, &c., did not apply; and that notwithstanding Order 43, r. 16, the plaintiff was proceeding regularly in applying for leave to issue sequestration. *Selous v. Croydon Local Board*, 53 L. T. (N.S.) 209.

For cases where the time has been extended, see *Wood v. Harrogate (Commissioners of)*, W. N. (1874), p. 225; *Taylor v. Friern Barnet Local Board*, W. N. (1885), p. 7; *Attorney-General Finchley Local Board*, 3 T. L. R. 357.

An injunction to restrain a nuisance may be granted by a county court in an action within its jurisdiction, and may be enforced by attachment. *Martin v. Bannister*, 4 Q. B. D. 491; 48 L. J. Q. B. 686; 28 W. R. 143; and see *Richards v. Cullerne*, 7 Q. B. D. 623.

As to the liability of a local board in respect of a decree against their predecessors, see *Attorney-General v. Mayor of Birmingham*; *Taylor v. Friern Barnet Local Board*, *ante*, p. 31, note (b) to section 12.

"When statutory powers are conferred under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one and so contravening the law of the land, the persons exercising them are liable to indictment." Per COCKBURN, C.J., in *Reg. v. Bradford Navigation Company*, 6 B. & S., at p. 648. This principle would seem to be applicable to cases, like some of those already mentioned, where power is given by local Acts to drain into a public river and a nuisance afterwards results from the altered circumstances of the district or new or more extensive operations or manufacture carried on therein.

With reference to the pollution of streams by sewage and drainage, see also the provisions of the Rivers Pollution Prevention Acts, 1876 and 1893, and the Alkali Works Regulations Act, 1881. Both of these Acts are set out in the Appendix.

The cases already cited in this note have reference to complaints made against the local board for polluting streams, and thus interfering with the rights of persons;

but in others the questions have arisen as to the power of the local board to intercept the supply of water, and they have been such as have been the subject of discussion in all times, namely, as to the rights of individuals in running streams, pools, or ponds. The full discussion of the law applicable to these rights cannot be entered upon here. The sanitary authority have sometimes been placed in the position of a private individual disputing as to his right to enjoy or to divert the flowing stream, to intercept it for irrigation or other purposes, as or against a riparian owner, to pollute or prevent the pollution of the water, or lastly to drain or restrain the drainage of underground or percolating streams. In one important case which came before the Court of Exchequer, and was the subject of appeal to the Exchequer Chamber, and ultimately to the House of Lords, the right of a local board of health by means of their wells to drain the underground water from the soil of a neighbouring landowner was established. *Chasemore v. Richards*, 2 H. & N. 168; 7 H. L. C. 349; 29 L. J. Ex. 81. In the elaborate judgments pronounced by CRESSWELL, J., and COLERIDGE, J., who dissented from the rest of the court, will be found an elegant exposition of much of the legal doctrine applicable to this important subject of property. The decision has been followed in *New River Company v. Johnson*, 2 E. & E. 435; 29 L. J. M. C. 93; 1 L. T. (N.S.) 295; 24 J. P. 244; in *Reg. v. Metropolitan Board of Works*, 32 L. J. Q. B. 105; 3 B. & S. 710; 8 L. T. (N.S.) 238; in *Ewart v. Belfast Poor Law Guardians*, 9 L. R. Ir. 172; and in *Black v. Ballymena*, 17 L. R. Ir. 459. See also *Bradford (Mayor of) v. Pickles* [1895], A. C. 587; 64 L. J. Ch. 459; 73 L. T. (N.S.) 353; 44 W. R. 190; 60 J. P. 3; 11 T. L. R. 555.

But a local board may not by an underground drain diminish the flow of a surface stream. *Grand Junction Canal Company v. Shugar*, L. R. 6 Ch. 483; 24 L. T. (N.S.) 492; 35 J. P. 660.

In another case where a canal company were empowered by their local Act to supply their canal with water from all streams, brooks, and watercourses, within one thousand yards of the canal, it was held that they had no ground of complaint against a local authority who having run a sewer under a road within that distance, made open gratings through which the rain and other surface water fell into the sewer. *Manchester, Sheffield, and Lincolnshire Railway Company v. Workson Board of Health*, ante, pp. 41, 47.

And see section 327, sub-section 4, and section 332, *post*, as to the saving for water rights in this Act. There has been a case upon the subject of the pollution of underground water, where it was held that no one has a right to use his own land in such a way as to be a nuisance to his neighbour; and therefore if a man puts filth or other poisonous matter on his land, he must take care that it does not escape so as to poison water which his neighbour has a right to use, although his neighbour may have no property in such water at the time when it is fouled. The plaintiff and defendant were adjoining landowners, and had each a deep well on his own land, the plaintiff's land being at a lower level than the defendant's. The defendant turned sewage from his house into his well, and thus polluted the water that percolated underground from the defendant's to the plaintiff's land, and, consequently, the water which came into the plaintiff's well from such percolating water when he used his well by pumping, became adulterated with the sewage from the defendant's well. The Court of Appeal held, reversing the decision of PEARSON, J., that the plaintiff had a right of action against the defendant for so polluting his source of supply, although, until the plaintiff had appropriated it, he had no property in the percolating water under his land, and although he appropriated such water by the artificial means of pumping. *Ballard v. Tomlinson*, 29 Ch. D. 115; 54 L. J. Ch. 454; 52 L. T. (N.S.) 942; 33 W. R. 533; 49 J. P. 692. The decision of PEARSON, J., had already been dissented from by KAY, J., in *Snow v. Whitehead*, 27 Ch. D. 588; 53 L. J. Ch. 885; 51 L. T. (N.S.) 253; 33 W. R. 128. But an injunction was refused to restrain a defendant from digging a well on the ground that by so doing, he might reduce the supply to the plaintiff's well, and injure it by letting in brackish water. *Tendring Hundred Waterworks Company v. Free, Rodwell and Company*, "Times," 3rd July, 1891.

18. Any local authority may from time to time enlarge, lessen, alter the course of, cover in, (a) or otherwise improve any sewer belonging to them, and may discontinue, close up, or destroy any such sewer that has in their opinion become unnecessary, on condition (b) of providing a

Alteration and discontinuance of sewers.

Section 18. sewer as effectual for the use of any person who may be deprived, in pursuance of this section, of the lawful use of any sewer : Provided that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance.(c)

(a) These words were held to authorise the covering in and converting into a pipe sewer of an open watercourse, which the court held to be a sewer. *Wheatcroft v. Matlock Local Board*, 52 L. T. (N.S.) 356.

(b) These words appear to render it necessary for the local authority to provide the new sewer in the first place. See *Attorney-General v. Guardians of Dorking*; *Attorney-General v. Acton Local Board*, ante, pp. 46, 47. As to the alteration and substitution of sewers by persons other than the local authority, see sections 331, 333, post. See *Marylebone Vestry v. Viret*, 19 C. B. (N.S.) 424; 34 L. J. M. C. 214; 12 L. T. (N.S.) 673; 11 Jur. (N.S.) 907, as to the necessity for providing private drains when the public sewer is changed.

(c) This proviso is limited to the discontinuance, closing up, or destruction of the sewer, and does not extend to the alteration. But see the next section, and section 25, post, p. 56. It would enable persons interested to apply to the Chancery Division for an injunction to stop works, while the local authority could be indicted for any nuisance caused by their proceedings if it were a public one. See *Reg. v. Bradford Navigation Company*, 6 B. & S. 631, 648; 34 L. J. Q. B. 191; 11 Jur. (N.S.) 769; 13 W. R. 892; 29 J. P. 613.

Cleansing
sewers.

19. Every local authority shall(a) cause the sewers belonging to them to be constructed, covered, ventilated,(b) and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.(c)

(a) Here a duty is imposed on the local authority, and if neglected they will be in default, as to which see section 299, post. The word "shall" in the section must be taken as imperative.

(b) This word is new. It has been suggested that the erection of a ventilating shaft attached to a private house is within the power of the local authority, having regard to the use of this term and the language of the Lords Justices in *Swanston v. Twickenham Local Board*, 11 Ch. D. 833; 48 L. J. Ch. 623; 40 L. T. (N.S.) 734; 27 W. R. 924; 43 J. P. 380.

(c) The authority are required to use reasonable skill and care to keep the sewers clean, and are only liable to actions at the suit of persons damaged when they have failed to do so. *Hammond v. Vestry of St. Pancras*, L. R. 9 C. P. 316; 43 L. J. C. P. 157; 30 L. T. (N.S.) 296; 37 J. P. 456. This decision was followed by *NORTH, J.*, in *Bateman v. Poplar District Board of Works* (No. 2), 37 Ch. D. 272; 57 L. J. Ch. 579; 58 L. T. (N.S.) 720; 36 W. R. 501. There it was held that the duty imposed by section 72 of the Metropolis Management Act, 1855 (which corresponds to the above section), to keep the sewers so as not to be a nuisance, is not an absolute duty, but only a duty to use all reasonable care and diligence to keep the sewers in a proper condition. If, therefore, a drain, which was originally a private drain, has by reason of another drain being connected with it, become "a sewer," and, therefore, by the Act vested in the district board, the board will not be liable for a nuisance caused by the drain, if it is shown that the connection was made illegally without the knowledge of the board, and that before action brought they did not know, and could not by the exercise of reasonable care have discovered, that the drain was a sewer. And see *Ogilvie v. Blything Union* (*Guardians of*), 65 L. T. (N.S.) 338; 67 L. T. (N.S.) 18; the facts of which are set out in the notes to section 13, ante, p. 35. In *Stretton's Derby Brewery Company v. Mayor, &c., of Derby* [1894], 1 Ch. 431; 63 L. J. Ch. 135; 69 L. T. (N.S.) 791; 42 W. R. 583; 8 R. 608; 10 T. L. R. 94, the defendants had made a sewer under a road within their district in 1855. The system of drainage then adopted reasonably provided for the district, and for the then probable increase of buildings which would drain into it, and there had been no negligence in constructing or maintaining the sewer or in not providing a new sewer or sewage system. The plaintiffs many years after the making of the sewer erected a brewery abutting on the road and connected the drainage of the brewery cellars with the sewers. In 1891, 1892, and 1893, the cellars were damaged by floodings from the sewer arising from the fact that by reason of the increase in the number of buildings draining into the sewer, when

very heavy falls of rain occurred, the sewer was too small to carry off the influx of water, and the pressure forced the sewage through the connections into the plaintiffs' cellars, and it was held that the defendants were not liable either as strangers and apart from any statutory duty or (there being no evidence of negligence) under the present section of this Act.

In *Blyth v. Birmingham Waterworks Company*, 11 Ex. 781; 25 L. J. Ex. 212, the company were not held liable for the bursting of a pipe caused by a frost of extraordinary severity. And see per Lord COLERIDGE, C.J., in *Dixon v. Metropolitan Board of Works*, 7 Q. B. D., at p. 433. In actions of this kind negligence must be shown. *Whitehouse v. Birmingham Canal Company*, 27 L. J. Ex. 25; and see *Bateman v. Poplar District Board of Works*, *supra*. In *Snook v. Grand Junction Waterworks Company, Limited*, 3 T. L. R. 308, it was held by HUDDLESTON, B., that a company incorporated by statute for the purpose of supplying water was, in the event of water escaping through a fracture in their main, protected from the doctrine established by *Rylands v. Fletcher*, L. R. 3 H. L. 330, and that before damages can be obtained it must be proved that the company were guilty of negligence which caused the accident. The Court of Appeal have since decided to the same effect in *Green v. Chelsea Waterworks Company*, 70 L. T. (N.S.) 547; 10 T. L. R. 175, 259; 15 M. C. C. 505. The omission to make a flap or penstock at the mouth of a drain, communicating with the main sewer from the plaintiff's premises, was held to be negligence in *Ruck v. Williams*, 3 H. & N. 308; 27 L. J. Ex. 357. In *Brown v. Sargent*, 1 F. & F. 112, ERLE, J., held that a board were not bound to provide sewers sufficient to withstand the pressure caused by extraordinary storms. And see *Meek v. Whitechapel Board of Works*, 2 F. & F. 144. As to the liability of the occupier of premises for an escape of water into adjoining premises, see *Snow v. Whitehead*, 27 Ch. D. 588; 53 L. J. Ch. 885; 51 L. T. (N.S.) 353; 33 W. R. 128; *Sutton v. Chard*, W. N. (1886), p. 120. *Gill v. Edouin*, 71 L. T. (N.S.) 762; 11 T. L. R. 93; *Princep v. Belgravia Estate, Limited*, 98 L. T. 590.

As to the liability of a local authority for accidents caused by plates or coverings placed on the highway for the protection of or as parts of sewers laid under the highway, see cases cited in the notes to sections 66, 144, *post*.

And see generally as to the obligation imposed by provisions such as those contained in this Act. *Geddis v. Bann Reservoir (Proprietors of)*, 3 App. Cas. 430.

See also the notes to section 15, *ante*, p. 36.

20. An urban authority(*a*) may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

Map of system of sewerage.

(*a*) This power is confined to the urban authority, but it will be remembered that 27 & 28 Vict. c. 39, s. 10, enables maps or plans of parishes to be made for the purposes of the union assessment committees.

By the Public Health (Support of Sewers) Act, 1883, s. 3, it is obligatory upon local authorities to make a map of all their sanitary works. See the section, *post*.

21. The owner(*a*) or occupier of the premises within(*b*) the district of a local authority shall be entitled to cause his drains(*c*) to empty into the sewers of that authority on condition(*d*) of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Power of owners and occupiers within district to drain into sewers of local authority.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds,(*e*) and the local authority may close any communication between a drain and sewer made in contraven-

Section 21. tion of this section, and may recover in a summary manner^(e) from the person so offending any expenses incurred by them under this section.

(a) See the definition in section 4, *ante*, p. 6.

(b) As to the power of owners and occupiers without the district, see next section.

(c) See the definition in section 4, *ante*, p. 18. This section is confined to *drains*. 11 & 12 Vict. c. 63, s. 47, included *sewers*.

(d) Hence the notice must be given and the owner must ascertain what are the regulations applicable before he commences to make his communication. The word used is *regulations*, not *bye-laws*; therefore the regulations are at the entire discretion of the local authority. The regulations contemplated appear to be general regulations, applicable to all cases in the district. See section 188, *post*. In *Russell v. Knight*, 16 M. C. C. 249; "Times," May 9, 1894, the plaintiff as owner of the soil of a road, brought an action against the defendant, the owner of adjoining land, for trespass in having unlawfully constructed in the soil of the road a drain communicating with a sewer in the road, and having unlawfully caused sewage matter to be passed through the soil of the road and through the drain and sewer. There was also a complaint that the sewage created a nuisance at the outfall of the sewer on the plaintiff's property. The sewer was a brick watercourse which was formed by a previous owner of the plaintiff's and defendant's land for the purpose of carrying away water that had accumulated in gravel pits. One of the defences raised by the defendant was that the sewer was vested in the local authority and not in the plaintiff, but it did not appear that the defendant or his predecessor in title at any time gave notice to the local authority of an intention to drain into the sewer. *BRUCE, J.*, referred to *Ferrand v. Hallas Land and Building Company*, *ante*, p. 33, and *Minehead Local Board v. Luttrell*, *ante*, p. 34, and held that the sewer was not a sewer made for profit within the meaning of section 13, *ante*, p. 32, and therefore vested in the local authority, but that the defendant's predecessor in title not having complied with the provisions of section 21 would have had no right to empty sewage matter into it. Also that the trespass of using the plaintiff's land for the purpose of making a communication with the sewer could not be justified by any of the provisions of the Act even on the assumption that the sewer was vested in the local authority; and if without the leave of the local authority the defendant had caused filth to flow so as to create a nuisance on the plaintiff's land, he could not justify it by showing that the sewer was vested in the local authority.

In districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, *post*), has been adopted, section 18 of that Act contains an important amendment of the text. It is there provided that where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose. The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority; but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under 50*l.*, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over 50*l.*, have the same determined by arbitration in manner provided by the Public Health Act. See the notes to the section, *post*.

Upon provisions similar to the present section of this Act contained in the Metropolitan Management Amendment Act, 1862, s. 61, it was held that where a person had caused a drain to communicate with a sewer, he might afterwards use the drain to the full extent of its capacity. But where a drain had formerly drained into an open sewer which had subsequently been converted into a covered sewer, the board having connected the drain with it at the time when it was covered in, it was held that the owner of the drain could not send an increase of sewage through the drain into the sewer. *Metropolitan Board of Works v. London and North Western Railway Company*, 17 Ch. D. 246; 50 L. J. Ch. 409; 44 L. T. (N.S.) 270; 29 W. R. 693. And it was held that a district board of works had no power under the same Act, if it approved of the plans and sections of sewers proposed to be constructed by a private landowner and branched into the main system, to withhold their sanction in writing to the construction of the same until such private landowner should pay a sum of

money to the board to cover the expenses of the board in supervising such works. *Reg. v. Greenwich District Board of Works*, 1 C. & E. 236.

The right of an owner to connect his drain with a sewer is an absolute right, and is not affected by the fact that the sewer empties into a watercourse, and that the sending of sewage into it may create an infringement of section 17, *ante*. *Ainley v. Kirkheaton Local Board*, 60 L. J. Ch. 734; 55 J. P. 230; 7 T. L. R. 323. And see *Molloy v. Gray*, 24 L. R. Ir. 258; *Kirkheaton Local Board v. Ainley* [1892], 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. (N.S.) 209; 41 W. R. 99; 57 J. P. 36, affirming 66 L. T. (N.S.) 340; 56 J. P. 374. But in districts where the 53 & 54 Vict. c. 59, *post*, is in operation, it is an offence to send into a sewer any injurious matter, chemical refuse, steam, &c., so as to impede the sewer or cause a nuisance. See sections 16 and 17 of that Act, *post*.

If the local authority once authorise or permit the drains to be made into their sewer they cannot afterwards stop them up. *Clegg v. Castleford Local Board*, W. N. (1874), p. 229; *Attorney-General v. Guardians of Dorking*, *ante*, p. 46; *Attorney-General v. Acton Local Board*, *ante*, p. 46; *Ogilvie v. Blything Union*, *ante*, p. 35; *Attorney-General v. Clerkenwell Vestry*, *ante*, pp. 46, 47.

(e) Section 251, *post*, provides for the recovery both of the penalty and expenses. As a penalty is in the nature of a punishment for an offence, it is recoverable on information. The procedure, therefore, differs from that for the recovery of expenses which are recoverable upon complaints, and are therefore civil debts within sections 6, 35 of the Summary Jurisdiction Act, 1879. This distinction did not exist at the time of the passing of the Act; the procedure was then the same in both cases. If, therefore, the penalty is proceeded for, the proceedings must be begun by information; if the expenses, by complaint under the sections just mentioned. It is to be observed that the expenses referred to are the expenses of the closing only. It is to be presumed that if the works have occasioned damage to the sewer of the local authority, they can maintain an action for compensation in respect of such damage; and, moreover, that the local authority may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be quite inadequate to repair.

The Rivers Pollution Prevention Act, 1876, s. 7, which is set out in the Appendix, requires the local authority to give facilities to manufacturers to enable them to carry liquid refuse into their sewers. See, however, 53 & 54 Vict. c. 59, ss. 16, 17, *post*.

22. The owner^(a) or occupier of any premises without the district of a local authority may cause any sewer^(b) or drain from such premises to communicate with any sewer of the local authority on such terms and conditions^(c) as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, at the option of the owner or occupier,^(d) by a court of summary jurisdiction or by arbitration in manner provided by this Act.

Use of sewers
by owners and
occupiers
without
district.

(a) See the definition in section 4, *ante*, p. 6.

(b) The previous section was confined to a drain, but here the term *sewer* has been introduced, because a more extended easement than that of a drain may be required in respect of premises without the district. The sewer may have to be continued for some distance.

(c) See note (d) to the last section as to compliance with the conditions of the local board, and as to the effect of permitting drains to communicate with the sewers. See also section 28, *post*, p. 60, as to agreements between local boards for the communication of sewers with the sewers of the adjoining districts. It may be suggested that if a communication were wrongfully made so as to cause damage, an action for trespass would probably lie. An injunction would probably be granted even if there were no damage beyond the fact that the communication had been made without compliance with the conditions of the local authority. Under the corresponding section of the Act of 1848 (10 & 11 Vict. c. 63), s. 48, the owner of land adjoining a district agreed by deed with the local board to do certain works and pay 10*l.* a year; and the board agreed to give him leave to drain through their drain all sewage from the property and houses then belonging to him, and from any houses thereafter to be erected on his property. Many more houses were afterwards erected,

Note to
Section 22.

and the urban sanitary authority who succeeded the local board were, under a new Act of Parliament, prevented from passing their sewage into the Thames as formerly. It was held that the deed was not *ultra vires*, and that the board could bind their successors as to the sewage of houses not then in existence; and further, that though the board were trustees for the ratepayers, they had exercised their discretion, and the agreement did not appear at the time improvident, and its turning out badly for them did not affect it. It was held also, that the law being altered so as to prevent the discharge of sewage into the Thames was no ground for setting aside the deed. *New Windsor (Mayor, &c., of) v. Stovell*, 27 Ch. D. 665; 45 L. J. Ch. 113; 51 L. T. (N.S.) 626; 33 W. R. 223.

(d) See, however, section 181, *post*. It is to be presumed that this provision is excepted out of the general provision. See note on section 4, *ante*, p. 6. When the dispute arises, if the owner or occupier do not exercise the option at once, the local authority may propose one alternative, and if it be not rejected, and the alternative selected, within a reasonable time, it will probably be best for the authority to proceed in the court, as the proceedings there can be more readily supported than would be the case in an arbitration.

Power of local
authority to
enforce drain-
age of un-
drained
houses.

23. Where any house(a) within the district of a local authority is without a drain sufficient for effectual drainage,(b) the local authority shall by written notice(c) require the owner(d) or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house;(e) but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size,(f) and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required,(g) and may recover in a summary manner(h) the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.(i)

Provided(k) that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers(l) of such houses to cause their drains to empty therein, and may apportion as they deem just(m) the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner(h) the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.(i)

(a) See the definition in section 4, *ante*, p. 15. It is immaterial when the house was built.

(b) This is an alteration of 11 & 12 Vict. c. 63, s. 49, which required a report of the surveyor, and made the decision of the local board conclusive. Here no report is required, and the fact of insufficient drainage may be questioned by the owner or occupier. The clause is, however, nearly identical with 29 & 30 Vict. c. 90, s. 10.

This section is sometimes erroneously considered as enabling a local authority to require an owner to alter his system of drainage, though it may be sufficient in itself, and to justify their refusing to allow an owner to abolish a cesspool, and drain into a

sewer. This cannot be done under the section, if the drains are, in fact sufficient, even if there is a convenient sewer. See *Attorney-General v. Clerkenwell Vestry* [1891], 3 Ch. 527; 60 L. J. Ch. 788; 65 L. T. (N.S.) 312; 40 W. R. 185, the facts of which are set out, *ante*, pp. 46, 47. The owner of a house within a sanitary district in Ireland was summoned for causing the watercloset attached to her house to discharge night soil into the waterchannel under the main street of N., a town within the district, causing a dangerous nuisance. It was proved that the channel or drain in question was, from its size and from having a gravel bottom, unsuited to receive and carry off faecal matter, and was only intended to carry off surface water. There was no other sewer in N. into which the sewage of the houses could be discharged, but the sanitary authority had made arrangements for the carting away of sewage weekly. There was no evidence of any nuisance on the defendant's premises; but it appeared that the drain or channel was in a most offensive state, and a justice being satisfied that a nuisance existed, ordered the defendant to disconnect the soil pipe of the watercloset with the drain in the main street, so as to prevent any deposit or accumulation from the watercloset being discharged into the drain. On a case stated, it was held that the justice's order was wrong, and should be quashed. *Molloy v. Gray*, 24 L. R. Ir. 258.

(c) See as to the authentication and service of this notice, sections 266, 267, *post*. On the corresponding section of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 473, it was held that a notice by an inspector without the direction of the vestry was insufficient, and that expenses incurred on the owner's default in carrying out the requirements of the notice could not be recovered. *St. Leonard's, Shore-ditch (Vestry of) v. Holmes*, 50 J. P. 132. The ground of the decision was that the local authority had to exercise a discretion in each case, and it was not enough for an inspector to act as he pleased, and rely upon the subsequent approval of the vestry. No doubt the same construction would apply to the text.

(d) See the definition in section 4, *ante*, p. 6. The local authority have an option as to whether they will give notice to the owner or occupier, and will doubtless be guided by their view as to how prompt and effectual action can be best obtained. See section 306, under which the owner may be empowered to enter when the occupier prevents him.

In districts where the Public Health Acts Amendment Act, 1890, is in operation, the local authority may agree with the owner themselves to make the drain. 53 & 54 Vict. c. 59, s. 18 (3), *post*.

(e) There is no reference to the sea as in the former Act, since it is not desirable to contemplate the pollution of the sea-shore, and the latter part of the clause would enable a drainage into the sea when practicable without injurious effects.

A question has been raised as to the meaning of the word *sit*. Does it include the curtilage? The better opinion seems to be that it means that piece of land upon which the house itself stands. See *Blashill v. Chambers*, 14 Q. B. D. 479; 53 L. T. (N.S.) 38; 49 J. P. 388.

(f) It will be seen from *Austin v. Vestry of Lambeth*, 4 Jur. (N.S.) 274, that the local board have the exclusive power of deciding whether their directions are complied with in regard to the materials to be used. The vestry ordered a drain to be made with pipes of *stoneware of the best kind and quality*, and the builder laid down *Aylesford pipes*, but the vestry declared that these were not stoneware and proceeded to remove them. STUART, V.C., held that it was for them to determine the question and refused to grant an injunction against them on motion. His decision was confirmed by the Lords Justices on appeal (27 L. J. Ch. 388, 392); and the bill was afterwards dismissed with costs on the hearing, his Honour being satisfied that the vestry had not acted capriciously or vexatiously. 4 Jur. (N.S.) 1032. The local authority must also determine the size of the drain. See *Woodward v. Cotton*, 3 L. J. Ex. 300.

(g) "The conditions prescribed by this section as a preliminary to the sanitary body taking the work out of the hands of the owner have regard solely to his rights. They are designed to control the action of the board as against him and not to limit their capacity to do the work. It is not permitted to them arbitrarily to interfere and do the work at the owner's expense without first giving him an opportunity of doing it himself. But if they were to do so, he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." Per LUSH, J., in *Hall v. Corporation of Batley*, 47 L. J. Q. B. 148;

Note to
Section 23.

37 L. T. (N.S.) 310 ; 42 J. P. 151. And see 53 & 54 Vict. c. 59, s. 18, sub-section (3), *post*.

(h) See as to the recovery of these expenses, section 251, *post*, and note (e) to section 21, *ante*, p. 53. As to the incidence of the expenses as between a tenant for life and the remainderman, see *Re Barney, Harrison v. Barney* [1894], 3 Ch. 562 ; 63 L. J. Ch. 676 ; 71 L. T. (N.S.) 180 ; 43 W. R. 105 ; 8 R. 459.

(i) See section 213, *post*. If there be any difficulty by reason of the owner not having a right to carry his drain through his neighbour's land, the local authority may be able by means of the powers conferred upon them by this Act to obviate the difficulty. For example, suppose the house to be drained is within 100 feet of a sewer, but the intervening land belongs to another person, the owner of the house would not by receiving the notice be entitled to make his drain through the intervening land, for the notice does not enable him to commit a trespass. See *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*, 1 Ex. D. 344, which was the case of a notice under section 94 to abate a nuisance on another person's land. But the local authority might, under section 16, lawfully make the drain under such circumstances, making compensation under section 308 to the person whose land was interfered with. In regard to the payment of the expenses as between lessor and lessee, see section 226, *post*. The case of *Finlinson v. Porter*, L. R. 10 Q. B. 188 ; 44 L. J. Q. B. 56 ; 32 L. T. (N.S.) 391 ; 39 J. P. 661, illustrates the effect of this provision between joint and neighbouring tenements having drains for mutual use. There the defendant conveyed to the plaintiff certain land subject to the joint ownership and right to the use by the defendant of a drain running through the land conveyed, together with the right of entering and repairing the drain or replacing pipes in it. The drain discharged into a sewer which was afterwards removed by the local board who constructed another at a lower depth. The defendant thereupon lowered the drain and put in fresh pipes in order to adapt it to the new sewer, and it was held that he was entitled to do so, whether his right under the deed was to be regarded as that of a tenant in common of the drain or as an easement only. But the easement must not be increased. See *Watson v. Troughton*, 47 J. P. 518.

(k) This is a new provision, and applies where the local authority find it most convenient or less expensive to change their sewer or to make an additional one than to require a number of house drains to be connected with an existing sewer. Note that the provision differs from that in the Acts relating to the metropolis, as to which see *Bateman v. Poplar District Board of Works*, 33 Ch. D. 360 ; 56 L. J. Ch. 149 ; 55 L. T. (N.S.) 374.

(l) See note (d), *ante*.

(m) Perhaps there may be an appeal to the Local Government Board under section 268, *post*. But reference should be made to *Marylebone (Vestry of) v. Viret*, 19 C. B. (N.S.) 424 ; 34 L. J. M. C. 214 ; 12 L. T. (N.S.) 673 ; 11 Jur. (N.S.) 907, a case where the vestry acting under the Metropolis Local Management Act (18 & 19 Vict. c. 120), s. 73, required the occupier to make a new drain, but it was held that the vestry were in fact seeking to make a complete new scheme of drainage, and that the occupier was not required to make the new drain or bear the charge thereof. The work was necessary not because the drain required improvement, in which case the circumstances would have been within section 73 which corresponds to the above section, but because of the alteration of the sewers which brought the case within section 69, corresponding to section 18 of this Act (*ante*, p. 49).

Power of
local autho-
rity to require
houses to be
drained into
new sewers.

24. Where (a) any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable, (b) the local authority may, on condition (c) of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or

drains provided by them under this section, shall be deemed to be **Section 24.**
 expenses properly incurred by them in the execution of this Act. (d)

(a) This is a provision which applies to houses built before the local board had established their own sewers, as otherwise the proper communication would have been made.

(b) See section 41, *post*, p. 68, for the procedure where a drain is a nuisance or injurious to health.

(c) The provision is to be performed before the previous drain is closed.

(d) And therefore payable according to section 207. They are not to be charged to the owners or occupiers.

25. It shall not be lawful in any urban district (a) newly to erect Penalty on building house without drains in urban district.
 any house or to rebuild any house which has been pulled down to or below the ground floor, (b) or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor (c) may appear to the urban authority to be necessary for the effectual drainage of such house ; (d) and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site (e) of the house to be built or rebuilt ; but if no such means of drainage are within that distance, (f) then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct.

Any person who causes any house to be erected or rebuilt (g) or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

(a) Note the restriction. If the rural authority find it desirable this provision should be in operation, they should apply to the Local Government Board to grant them the powers of an urban authority under section 276, *post*.

(b) This constitutes a *new building*. See section 159, *post*.

(c) This must be the surveyor of the urban authority. See section 189, *post*. See also *Lewis v. Weston-super-Mare Local Board*, the facts of which are set out in the notes to section 16, *ante*, p. 38.

(d) Generally the bye-laws of the authority require plans and specifications of the building and its drainage to be submitted to the board of the authority. These are referred to the surveyor who is to report to the board. The board must then decide as to the sufficiency of the proposed drainage, and give their directions as to the course to be followed. There does not appear to be any appeal against their directions. It is to be observed that the authority cannot compel a building owner to make a sewer as distinguished from a drain under this section. *Clarke v. Paddington Vestry*, 5 Jur. (N.S.) 138. In districts where the Public Health Acts Amendment Act, 1890, has been adopted, the local authority may agree with the owner to make the drain. See the section, 53 & 54 Vict. c. 59, s. 18, sub-section (3), *post*.

(e) See note (e) to section 23, *ante*, p. 55.

(f) This enactment will often render it necessary for the person proposing to rebuild to secure the rights of sewerage under the ground adjoining his property.

(g) There is no penalty imposed upon the occupier. As to the recovery of the penalty, see section 251, *post*.

26. Any person who in any urban district, without the written Penalty on unauthorised building over
 consent of the urban authority, (a) —

(1.) Causes any building, (b) to be newly erected over any sewer of the urban authority ; or

Section 26.

sewers and
under streets
in urban
district.

- (2.) Causes any vault, arch, or cellar, to be newly built or constructed under the carriageway of any street,(c)

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority ;(d) and the urban authority may cause any building, vault, arch or cellar, erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover in a summary manner,(e) any expenses incurred by them in so doing from the offender.

(a) There is no special mode of giving this consent, as in the former Act. It may be expressed in a letter from the clerk of the board. The consent ought to be entered on the board's minutes, and a copy of the minute forwarded to the person requiring the consent.

(b) As to what is a *building*, see note to section 4, *ante*, p. 17.

(c) See the definition in section 4, *ante*, p. 12. This prohibition is here introduced because such vault or cellar might interfere with the course of a sewer hereafter to be made. It refers to the carriageway only, and has no reference to the footpath. As to the repair of vaults, arches, and cellars under streets in districts where the 53 & 54 Vict. c. 59 has been adopted, see section 35 of that Act, *post*.

(d) Forfeitures are recovered by process described in section 251, *post*. A forfeiture under this section is recoverable as a penalty, for it will be observed that the section speaks of the *offence*. The proceedings are, therefore, in their nature criminal, and the forfeitures must be recovered on information. See note (e) to section 21, *ante*, p. 53. The five pounds is recoverable in any case, the forty shillings only after notice.

(e) See section 251, *post*, and note (e) to section 21, *ante*, p. 53. These expenses are recoverable on complaint, and constitute a civil debt under the Summary Jurisdiction Act, 1879, for although the section speaks of them as recoverable from the *offender*, they are not in the nature of penalties for the offence, which are provided for by the previous part of the section.

DISPOSAL OF SEWAGE.

Powers for
disposing
of sewage.

27. For the purpose of receiving, storing, disinfecting, distributing or otherwise disposing of sewage, any local authority(a) may—

- (1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority) without their district ; and
- (2.) Contract(b) for the use of purchase or take on lease any land, buildings, engines, materials or apparatus either within or without their district ; and
- (3.) Contract(b) to supply for any period not exceeding twenty-five years(c) any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply :

Provided that no nuisance be created in the exercise of any of the powers given by this section.(d)

(a) This and the following sections apply to both urban and rural authorities, the words in the section being "any local authority."

The corresponding section in 11 & 12 Vict. c. 63, s. 46, was held not to enable the local board to enter the land of a person against his consent, and make a tank and reservoir or depository therein, for the reception of the sewage from a sewer proposed to be made after a report from the surveyor and a notice to the owner of the land.

Where such a proceeding was proposed the Court of Chancery interfered by an injunction. *Sutton v. Mayor of Norwich*, 27 L. J. Ch. 739; 31 L. T. (o.s.) 389. See also *Attorney-General v. Metropolitan Board of Works*, 1 H. & M. 298; 9 L. T. (n.s.) 139; 11 W. R. 820. While, therefore, a local board have power to make sewers in or through private lands (section 16), without the consent of the owner of such lands (paying compensation), they appear to have no such power to make works for the disposal of sewage under this section. If it be necessary the local authority may purchase land, and for the provisions applicable thereto, see sections 175, 176, *post*. If it be not so necessary, but property is injured, the person entitled thereto will have a claim for compensation, as to which see section 308, *post*.

11 & 12 Vict. c. 63, s. 44, used general language in reference to the making of the sewer. Nevertheless it was held in *Haywood v. Lowndes*, 28 L. J. Ch. 400; 4 Drew, 454; 34 L. T. (o.s.) 366; 5 Jur. (n.s.) 185, that a local board could not make sewers out of their district. Hence 21 & 22 Vict. c. 98, s. 30, and 24 & 25 Vict. c. 61, ss. 4-7, were passed, the latter of which contains provisions which are now set out in sections 32-4 of this Act, and apply only to a sewer or other work *out* of the district.

As to the rating of a sewage farm provided under this section, see *Burton-upon-Trent (Mayor, &c., of) v. Burton-upon-Trent Union*, 24 Q. B. D. 197; 59 L. J. M. C. 1; 62 L. T. (n.s.) 412; 38 W. R. 181; 54 J. P. 453; 6 T. L. R. 67; *London County Council v. Erith Churchwardens* [1893], A. C. 562; 63 L. J. M. C. 9; 69 L. T. (n.s.) 725; 42 W. R. 330; 57 J. P. 821; 6 R. 22; *Leicester (Mayor of) v. Beaumont Leys Churchwardens*, 63 L. J. M. C. 176; 70 L. T. (n.s.) 659; 10 R. 401.

(b) As to the contracts of urban authorities, see section 174, *post*.

All contracts with authorities should be under seal if the value or amount exceeds 50*l*.

(c) A longer term than is provided in the previous Act (30 & 31 Vict. c. 113), s. 4. Great care is required in framing these contracts. See further, section 30, *post*, p. 61, as to the terms of the contract.

A local board entered into an agreement with a sewage company, in pursuance of which they afterwards granted a lease to the company of the sewage works of a town and of a plot of land for a term of 14 years, the company covenanting that they would during the term keep the outfall of the works, with the engines, pumps, and apparatus in proper working order, so as to admit of the free flow of the sewage through the sewers communicating with the works, and so that the same might not at any time be stopped. To a bill by the local board against the company, complaining that the company's works were insufficient to treat the sewage successfully, that they were pumping only a portion of the sewage out of the sewers, and were damming up or heading back the residue in the sewers so as to be a nuisance to the inhabitants of the town, and that the plaintiffs were being threatened with proceedings, and praying for an injunction to restrain the defendants from permitting the sewage to remain in the sewers so as to be a nuisance or a damage to the plaintiffs, and from damming up or heading back the sewage in the sewers, the defendants demurred on the ground that the court could not superintend the proper performance of the works, that the plaintiffs had alleged no special damage, and that it was not the practice of the court to restrain the infringement of a public right at the suit of a corporation, except at the instance or in the presence of the Attorney-General, the court overruled the demurrer and granted the injunction. *Nuneaton Local Board v. General Sewage Company*, L. R. 20 Eq. 127; 44 L. J. Ch. 561. O. agreed to grant to a local board a lease of land for the purpose of an outfall for drainage, and "to allow the use of the land below the level of the said outfall for drainage purposes." O. was to have the benefit of the sewage matter, paying nothing therefor. The board erected a sewage tank with an outlet, but without any works for distributing the sewage over O.'s land. It was held by PEARSON, J., that the words in the agreement did not give the board a right to indiscriminately pour the sewage on the land, and that they must use proper means for distributing the sewage over the land in a manner to benefit it, and not to injure it, for agricultural purposes. *Witham Local Board v. Oliver*, 1 T. L. R. 60.

(d) See the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 24. This prohibition applies to private as well as public nuisances, and local boards have been restrained from carrying on works of sewerage and drainage highly important with reference to their own district and the sanitary state of it, when, however, they created an injury and a nuisance to the property of individuals. In the note to section 17, *ante*, p. 41, this subject is dealt with more fully.

Section 28.

Power to agree for communication of sewers with sewers of adjoining district.

28. The local authority of any district may by agreement^(a) with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers to communicate with the sewers of such last mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or in case of dispute, may be settled by the Local Government Board :^(b) Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

(a) This should be under seal. As the Local Government Board are to give their sanction to it, a draft of the agreement should be submitted to that board before it is accepted and executed. The public inquiry required by 35 & 36 Vict. c. 79, s. 32, is dispensed with, but, perhaps, the board will make some local inquiry.

(b) See the further power granted by section 285, when the sanction of the Local Government Board is not required to the joint action there authorised.

By an agreement between the N. local board and the C. local board, it was agreed that the N. board should make a sewer and allow the sewers of the C. district to drain into it, but the sewage of any other district or places was not to be permitted by the C. board to pass into their sewage so as to discharge into the sewer to be made by the N. board. Under Acts of Parliament then in existence, the owner of premises beyond the limits of a district had power to make a sewer to communicate with the sewers of a district, and by an Act subsequently passed (Act of 1875, section 22), similar powers were given. It was held that the provisions of the agreement were overruled by the subsequent Act, and that the N. board could not restrain the C. board from making sewers which would discharge into the sewer of the N. district. It was held also that the agreement must be taken to have been made subject to the provisions of the law then existing under which the owners of premises beyond the C. district had similar powers. *Newington Local Board v. Cottingham Local Board*, 12 Ch. D. 725 ; 48 L. J. Ch. 226 ; 40 L. T. (N.S.) 58. And see *Mayor, &c., of New Windsor v. Stovell*, ante, pp. 53, 54. Where there is no agreement such as that mentioned in the section, it appears from *Attorney-General v. Acton Local Board*, ante, p. 46, that notwithstanding the obligation imposed on a local board by the Public Health Act, 1875, to drain their district, their right to send the sewage of their district directly or indirectly into the sewers belonging to the sanitary authority of an adjoining district is, in the absence of express enactment or agreement, no higher than the right of a landowner to send sewage from his land on to the land or into the drains of a neighbouring landowner. If, therefore, a prescriptive right has been acquired to send some sewage from one district into the sewers of another, the burden cannot be increased without the consent of the sanitary authority of the latter district. The *ratio decidendi* of *Metropolitan Board of Works v. London and North Western Railway Company*, 17 Ch. D. 246 (ante, p. 52), applies to a local board just as it does to an ordinary landowner. An injunction was granted in the absence of proof of substantial damage, on the ground that the defendants by their pleading claimed a right to continue doing that which the court held they were not entitled to do. The court granted such injunction as to the future, but refused to grant a mandatory injunction to compel the stopping up of existing drains ; because (1) to do so would cause serious inconvenience to the district ; and (2) because it is doubtful whether a local board have power to stop up drains which they have once authorised to be connected with their sewers. And inasmuch as the injunction applied only to the future, the court refused to suspend its operation.

Power to deal with land appropriated to sewage purposes.

29. Any local authority may deal with any lands held by them for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding twenty-one years for agricultural purposes,^(a) or

by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.^(b)

Section 29.

(a) Such a lease granted to a member of a local authority other than the council of a borough will not disqualify him under section 46 of the Local Government Act, 1894 (56 & 57 Vict. c. 73, *post*). *Reg. v. Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. (N.S.) 688; 44 J. P. 507. The same construction is to be placed on section 12 of the Municipal Corporations Act, 1882, which relates to contracts with members of borough councils.

There is another provision for leases of the lands of authorities in section 177.

As to the rating of a sewage farm worked by the local authority, see *Burton-upon-Trent (Mayor, &c., of) v. Burton-upon-Trent Union*, 24 Q. B. D. 197; 59 L. J. M. C. 1; 62 L. T. (N.S.) 412; 38 W. R. 181; 54 J. P. 453; 6 T. L. R. 67; *London County Council v. Erith Churchwardens* [1893], A. C. 562; 63 L. J. M. C. 9; 69 L. T. (N.S.) 725; 42 W. R. 330; 57 J. P. 821; 6 R. 22; *Leicester (Mayor of) v. Beaumont Leys Churchwardens*, 63 L. J. M. C. 176; 70 L. T. (N.S.) 659; 10 R. 401.

(b) This appears to be a repetition of the proviso to section 27, *ante*, p. 58.

30. Where any local authority agree with any person^(a) as to the supply of sewage and as to works to be made for the purpose of such supply,^(b) they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become shareholders^(c) in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested.

Contribution to works under agreement for supply or distribution of sewage.

(a) See the definition in section 4, *ante*, p. 6.

(b) See section 27, sub-section (3), *ante*, p. 58. This section contemplates the execution of works by the landowner; under the previous section the execution may be by either party.

(c) This provision was contained in 30 & 31 Vict. c. 113, s. 15; but the consequences might be so complicated that it is hardly to be expected that it will be often adopted. It is difficult to consider the consequences of a local authority being involved in a winding-up suit. On this subject "*Buckley on Companies*," pp. 6, 74, may be referred to. And see also the *The Royal Bank of India's Case*, L. R. 4 Ch. 252, as to the liability of a corporate body in respect of shares in a company.

31. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorised by "The Improvement of Land Act, 1864," and the provisions of that Act shall apply accordingly.

Application of 27 & 28 Vict. c. 114, to works for supply of sewage.

The provisions of this Act are too numerous to be set out in this work. It enables owners of limited interests in lands to execute certain improvements (in which by this section sewage works are now included), and to charge the lands with the cost.

AS TO SEWAGE WORKS WITHOUT DISTRICT.

32. A local authority shall, three months^(a) at least before commencing the construction or extension of any sewer or other work for sewage purposes^(b) without their district,^(c) give notice^(d) of the

Notice to be given before commencing

Section 32. intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

sewage
works without
district.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through, across, under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served^(e) on the owners^(f) or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the trustees,^(g) surveyors of highways, or other persons having the care of such roads or streets.

(a) That is, calendar months. See section 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(b) The plaintiffs had a sewage farm on the banks of the river Wandle. The defendants had also some sewage works higher up the same stream. The effluent water from these works was carried away by a drain which passed through the plaintiffs' sewage farm, and discharged itself into a piece of water called the Western Pool, which communicated with the river by means of a sluice, and, becoming narrower, ultimately formed a backwater into the river, into which it discharged itself lower down the stream. Into this backwater the effluent water from the plaintiffs' sewage farm was discharged. The bottom of the Western Pool being uneven, sewage fungus collected there and caused a nuisance. The freeholder of the pool commenced proceedings in respect of the nuisance, which was compromised, the defendants agreeing with him to cleanse the pool and cement the bottom of it. The pool was entirely out of the defendants' district, and partly in the plaintiffs' district. The defendants having commenced their operations without giving any notice under this section, the Court of Appeal held that they were wrong, as the works were sewage works within the meaning of the section. *Wimbledon Local Board v. Croydon Rural Sanitary Authority*, 32 Ch. D. 421; 56 L. J. Ch. 159; 55 L. T. (N.S.) 106.

(c) The power to construct a sewer without the district is given by section 16, *ante*, p. 38. The powers of the local authority as to other sewage works are contained in section 27, *ante*, p. 58.

This section applies even where the proposed works are in an adjoining district, and the consent of the local authority of that adjoining district has been obtained under section 285, *post*. *Jones v. Conway and Colwyn Bay Joint Water Supply Boards*, cited in note (f) to section 16, *ante*, p. 40.

(d) One advertisement would satisfy the terms of this clause; but the local authority may sometimes deem it advisable to advertise several times. The notice should be signed by the clerk to the authority. See section 266, *post*.

(e) No time is specified when the notice is to be served, but it is to be implied from the next clause that it should be three months before it is proposed to commence the works.

(f) See the definition in section 4, *ante*, p. 6. As to the authentication and service of such copy, see sections 266, 267, *post*; and as to the term *reputed* owners, see note on section 176, *post*.

(g) The service on the clerk of the trustees will doubtless be sufficient. It will be remembered that in urban districts the sanitary authority is the surveyor of highways. See section 144.

In case of
objection,
works not to
be commenced
without
sanction of
Local Govern-
ment Board.

33. If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority^(a) at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Govern-

ment Board after such inquiry as hereinafter mentioned,(b) unless such **Section 33.** objection is withdrawn.

(a) The notice should be addressed to the local authority, but may, as it seems, be in general terms. If there be no objection, no reference to the Local Government Board will be necessary unless a loan is required, as to which see section 233, *post*.

(b) See the next section.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry(a) on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

Inspector to hold inquiry and report to Local Government Board.

(a) See, as to this, section 293, *post*. These inquiries have been frequently held. The application should be in writing on folio foolscap paper, and should be signed by the clerk of the local authority, although it may, indeed, be sealed with the seal of such authority, which, however, frequently causes inconvenience and delay.

PRIVIES, WATERCLOSETS, &C.

35. It shall not be lawful newly to erect any house,(a) or to rebuild any house pulled down to or below the ground floor,(b) without a sufficient(c) watercloset, earthcloset, or privy, and an ashpit(d) furnished with proper doors and coverings.

Penalty on building houses without privy accommodation.

Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty(e) not exceeding twenty pounds.

(a) See note on section 4, *ante*, p. 15.

(b) See section 159, *post*.

(c) In case of dispute the justices will decide as to what is or is not sufficient upon the evidence before them.

A respondent built two cottages with one privy, which was found, as a fact, to be sufficient for the use of the occupiers of both cottages. It was held that he had complied with the requirements of this section, on the ground that it does not require a separate watercloset, earthcloset, or privy for every individual house built or rebuilt. *Reg. v. Clutton Union or Clutton Union v. Pointing*, 4 Q. B. D. 340; 48 L. J. M. C. 135; 40 L. T. (N.S.) 844; 27 W. R. 658; 43 J. P. 686. But though no proceedings have been taken under this section, it is open to the authority at any time to proceed under the next section.

See as to sanitary conveniences used in common. 53 & 54 Vict. c. 59, s. 21, *post*.

(d) The expression "ashpit" includes any ashtub or other receptacle for the deposit of ashes, faecal matter, or refuse. 53 & 54 Vict. c. 59, s. 11, *post*.

The words "furnished with proper doors and coverings" appear to refer to a watercloset, earthcloset, and privy as well as to an ashpit. *Clerkenwell Vestry v. Feary*, 24 Q. B. D. 703; 59 L. J. M. C. 82; 62 L. T. (N.S.) 697; 54 J. P. 676.

(e) See, as to the recovery of this penalty, section 251, *post*.

36. If a house within the district of a local authority appears to such authority, by the report of their surveyor or inspector of nuisances,(a) to be without a sufficient(b) watercloset, earthcloset, or privy, and an ashpit furnished with proper doors and coverings, the local authority

Power of local authority to enforce provision of

Section 36. shall, (c) by written notice, (d) require the owner or occupier (e) of the house, within a reasonable time therein specified, to provide a sufficient watercloset, earthcloset, or privy, and an ashpit furnished as aforesaid, or either of them, as the case may require. (f)

privy accom-
modation
for houses.

If such notice is not complied with, the local authority may, (g) at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner (h) from the owner (i) the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses: (k) Provided that where a watercloset, earthcloset, or privy has been, and is used in common by the inmates of two or more houses, or if, in the opinion of the local authority, a watercloset, earthcloset, or privy may be so used, they need not (l) require the same to be provided for each house.

(a) This officer is introduced here for the first time. It should here be noticed that under section 191, *post*, a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

(b) Though the officer is to report, the local authority are to determine as to the sufficiency of the convenience. It has been decided by STUART, V.C., and afterwards by the Lords Justices upon appeal, that a district board under the Metropolis Local Management Act (18 & 19 Vict. c. 120), where there is a clause identical with the above, could not lay down any general rule prescribing the use of privies, and requiring waterclosets to be erected in the place of privies, in compliance with the general rule, and not with reference to the particular circumstances of the case. When, therefore, the board were proceeding to erect waterclosets in default of the owner, it was held that these proceedings could not be supported. *Tinkler v. Wandsworth District Board of Works*, 27 L. J. Ch. 342; 2 De G. & J. 261; 30 L. T. (o.s.) 146; 22 J. P. 223.

But when the local authority have decided that the existing accommodation is insufficient, it appears that they have power to order what works must be executed, for the section gives them power to order the providing of a "sufficient watercloset, earthcloset, or privy, and an ashpit, or either of them, as the case may require." *St. Luke (Vestry of) v. Lewis*, 31 L. J. M. C. 73; 1 B. & S. 865; 5 L. T. (N.S.) 608; 26 J. P. 262. This decision was followed in *Sherborne Local Board v. Boyle*, Q. B. D. 18th March, 1880; 46 J. P. 675. In the case last mentioned the defendant was the owner of several houses, each of which had a watercloset attached to it. The waterclosets had no flushing apparatus, and were flushed by pouring water from pails. The surveyor of the local board having reported that the waterclosets were insufficient, the local board gave notice to B. to provide sufficient waterclosets, and, on his failing to do so, executed the necessary works, and proceeded to recover the expenses from B. It was held that the justices were right in refusing to hear evidence as to the necessity of the works done by the board; it was for the local board to determine, on the report of the surveyor, whether the waterclosets were sufficient, subject only to the right of appeal to the Local Government Board under section 268; and the duty of the justices in enforcing payment of the expenses incurred was purely ministerial. In the course of his judgment, LUSH, J., said: "I do not say that there may not be waterclosets in certain localities, and under certain circumstances, which would be sufficient without a flushing apparatus by way of cistern or otherwise; but, on the other hand, it is quite obvious that there may be a watercloset which, under other circumstances, though a watercloset, is not sufficient, and it is for the local board to form their opinion. They know the locality, and the condition of the houses and the neighbourhood, and it is for them to form a judgment whether the report represents the waterclosets as being inefficient for the purposes of the Act. It is quite clear that the local board took that view, because, immediately upon this, they gave a notice, resting upon the report of their surveyor, that the waterclosets were insufficient by reason of their not being provided with cisterns and flushing apparatus. If that be so, I think it is quite enough to justify them in forming their opinion upon the matter; therefore, we have no authority to interfere." And see, per POLLOCK, B., in *Ex parte Whitchurch*, 6 Q. B. D. 545; 50 L. J. M. C. 99; 45 J. P. 617.

Note to
Section 36.

As to the enforcing of the provision of privy accommodation in houses let in lodgings, see section 90, *post*, p. 106.

For the definition of an ashpit, and the application of the words "furnished with proper doors and coverings," see note (d) to the preceding section.

(c) This is a duty imposed upon the local authorities, and applies to each class of authority.

(d) See sections 266, 267, *post*, as to the authentication and service of the notice.

(e) See section 306, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(f) See note (b), *supra*.

(g) This proceeding is permissive. If the owner has executed some works the local authority must be prepared to prove their insufficiency by evidence.

(h) See section 251, and note (e) to section 21, *ante*, p. 53. It is to be observed that justices, when enforcing payment of these expenses, act ministerially only. They cannot enter into the consideration of whether the accommodation existing before the notice was insufficient or not. If the notice was within the jurisdiction of the local authority, the justices have no alternative but to order payment. The only method of questioning the propriety of the local authority's decision is by appeal to the Local Government Board under section 268, *post*. *Sherborne Local Board v. Bogle*; *Vestry of St. Luke v. Lewis*, *supra*. And see also *Hargreaves v. Taylor*, 32 L. J. M. C. 111; 3 B. & S. 613; 8 L. T. (N.S.) 149; 27 J. P. 325.

(i) Though the notice may be given to the owner or occupier, these expenses are to be recovered from the owner, who is defined in section 4, *ante*, p. 6. He may appeal against the order to the Local Government Board under section 268, *post*.

(k) See section 213, *post*.

(l) It will be observed that the previous part of the section rendered it incumbent upon the local authority to require a sufficient watercloset or privy to be made, and, therefore, though this proviso removes this compulsion in this particular case, it does not prevent them from making the requisition when they think proper to do so. The authority are the sole judges of the insufficiency under this section. At the same time it must be remembered that one privy may be sufficient for two houses, so as to protect the owners from liability to the penalty under section 35. The two sections are entirely distinct. Per COCKBURN, C.J., in *Reg. v. Clutton Union or Clutton Union v. Pointing*, *ante*, p. 63.

37. Any enactment in force within the district of any local authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset.

As to earth-
closets.

Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any water-closet in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract (a) with any person to undertake a supply of dry earth or other deodorizing substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes (b) any place for the reception and deodorization of faecal matter constructed to the satisfaction of the local authority.

(a) See section 173, *post*, as to this contract.

(b) As to the meaning of this word, see *ante*, p. 5.

38. (a) Where it appears to any local authority by the report of their surveyor (b) that any house (c) is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture, trade, or business, the local authority may, if they think fit, by written notice (d) require the owner or occupier (e) of such house, within the time therein

Privy accom-
modation for
factories.

Section 38. specified, to construct a sufficient(*f*) number of waterclosets, earthclosets or privies, and ashpits for the separate use of each sex.

Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued.(*g*)

(*a*) This section is now almost, if not entirely, obsolete, for in districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 52, Part III), is in force, the above section will be superseded by section 22 of the latter Act, and in districts where section 22 of the Public Health Acts Amendment Act, 1890, is not in force, the provision of sanitary conveniences for factories and workshops is governed by section 35 of the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), in the Appendix, *post*. Section 22 of the Act of 1890 provides as follows :—(1) Every building used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business, whether erected before or after the adoption of Part III. of this Act in any district, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex. (2) Where it appears to an urban authority, on the report of their surveyor, that the provisions of this section are not complied with in the case of any building, the urban authority may, if they think fit, by written notice, require the owner or occupier of any such building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as aforesaid. (3) Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding 20*l*. and a daily penalty not exceeding 40*s*. (4) Where this section is in force, section 38 of the Public Health Act, 1875, shall be repealed. See this section and the notes thereto, *post*. See also section 35 of the Factory and Workshop Act, 1895, and notes thereto in the Appendix, *post*.

(*b*) In this section the surveyor only is referred to, but his report will not conclude the authority ; they have a discretion whether to act or not. By section 4 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), where it appears to an inspector under that Act that any act, neglect, or default, in relation to any drain, water-closet, earthcloset, privy, ashpit, water-supply, nuisance or other matter in a factory or workshop, is punishable or remediable under the law relating to public health and not under that Act, the inspector shall give notice in writing of such act, neglect, or default, to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon as to that authority may seem proper for the purpose of enforcing the law. The inspector may for the purposes of this section take with him into a factory or a workshop, a medical officer of health, inspector of nuisances, or other officer of the sanitary authority. This section does not take away the power of the local authority to act on the report of their surveyor. See the provisions of the Act of 1883 as to bakehouses, *ante*, p. 29.

(*c*) See the definition in section 4, *ante*, p. 15.

(*d*) See sections 266, 267, as to the service and authentication of notices.

(*e*) Under this section the occupier may be required to execute the works, as the occupier of a factory may be quite competent to attend to this complaint, and may be the proper person to remedy it.

(*f*) The local authority may properly specify the number which they think sufficient, but their decision will not conclude the question if the owner or occupier construct what he considers sufficient and the justices concur. Compare this section with the provisions of section 36 on this point, and see note (*b*) to that section, *ante*, pp. 63, 64. It is also to be noticed that, though the previous section applies to such a house as is herein described, it only required a sufficient watercloset to be supplied. In this section *separate* privies are required to be provided for the different sexes.

(*g*) As to the recovery of this penalty, see section 251, *post*.

39. Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations, (*a*) urinals, waterclosets, earth-

closets, privies, and ashpits, and other similar conveniences for public Section 39. accommodation.(b)

(a) In *Biddulph v. Vestry of St. George, Hanover Square*, 33 L. J. Ch. 411; 3 De G. J. & S. 493; 8 L. T. (N.S.) 558; 2 N. R. 212, the defendants assuming to act under the corresponding section of 18 & 19 Vict. c. 120 (Metropolis), passed a resolution to erect a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace. STUART, V.C., being of opinion that the erection of a urinal at that spot would be a serious injury to the property in the neighbourhood, upon bill filed by a resident nearly opposite to the site of the proposed urinal, granted an injunction restraining the vestry from erecting it. Upon appeal the Lords Justices, being of opinion that the evidence did not show that the proposed urinal would be in point of law a nuisance, or that the vestry were exceeding their statutory powers in what they proposed to do, or that they were influenced by improper motives, discharged the order for the injunction. In *Mason v. Wallasey Local Board*, L. J. Notes of Cases, 1876, p. 212; 58 J. P. 477, JESSEL, M.R., held that in the absence of improper motives an absolute discretion was given to the urban authority in choosing the site. And see the decision of POLLOCK, B., in *Spicer v. Mayor of Margate*, 24 S. J. 821. But while the urban authority have a discretion, they will be controlled by the court if they act in an unreasonable manner by erecting a urinal where it would be a nuisance to the owners of adjoining property (*Vernon v. Vestry of St. James, Westminster*, 16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. (N.S.) 229, and see *Graham v. Newcastle-upon-Tyne Corporation* (No. 1), 67 L. T. (N.S.) 790; 2 R. 254), inasmuch as the words used in the section are "proper and convenient." Each case will, therefore, depend on its own circumstances. Where a local board assuming to act under this section erected a public urinal partly upon a highway and partly upon a strip of land belonging to the plaintiff and so near to other adjoining land of the plaintiff as to be a nuisance to her and to her tenants, and to depreciate the value of her property, it was held that the plaintiff was entitled to a mandatory injunction to restrain the board from continuing the urinal upon her land or so near thereto as to cause injury or annoyance to her and her tenants. It was held also that it was not a matter in which notice of action under section 264 was required (now repealed and replaced by the provisions of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), *post*); nor was compensation under section 308 the proper remedy. *Sellors v. Matlock Bath Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 762. In another case, plaintiff was the owner of numerous houses of a superior class abutting on a road overlooking a public park, and defendants, the urban authority, resolved to erect a urinal and lavatory in the park, about 230 feet from the plaintiff's nearest house, and in full view of them all. Plaintiff moved for an injunction to restrain defendants from erecting the proposed building so as to cause a nuisance to himself and his tenants, and proved that the letting value of his houses would be diminished, and that there were other sites more convenient, but failed to prove that any nuisance by smell was likely to arise. And it was held by CHITTY, J., that an injunction ought not to be granted in the absence of evidence of bad faith or arbitrary, perverse, and vexatious conduct on the part of the defendants in selecting the site. *Pethick v. Mayor, &c., of Plymouth*, 42 W. R. 246; 70 L. T. (N.S.) 304; 10 T. L. R. 204; 58 J. P. 476; 8 R. 107. But where by a local Act a municipal corporation were empowered to erect in any street or public place or on land belonging to them waterclosets, urinals, and lavatories for the use of the public, and the word "street" in that Act had the same meaning as is assigned to it by the Public Health Acts, and the corporation made in a public promenade, which was by another local Act free and open for public use but was not a highway repairable by the inhabitants at large, certain waterclosets, urinals, and lavatories, sunk to a depth of nine feet, and lighted by skylights level with the surface of the ground, it was held by the Court of Appeal that though the promenade was a public place still as nothing had been dedicated to the use of the public except the surface, the soil under the surface could not be considered part of a public place or street within the meaning of the local Act, and that the corporation were not entitled to erect the conveniences in question, and it was held also that the corporation could not justify their acts under sections 39 and 149 of the Public Health Act, 1875, for, assuming that the *locus in quo* was a street, it was not a highway repairable by the inhabitants at large, and the property in the soil did not, therefore, vest in the corporation. *Baird v. Mayor, &c., of Tunbridge Wells* [1894], 2 Q. B. 867; 64 L. J. Q. B. 145; 71 L. T. (N.S.) 211; 42 W. R. 378; 59 J. P. 36; 10 T. L. R. 378; 9 R. 479.

**Note to
Section 39.**

(b) As to the power of an urban authority to make regulations and bye-laws for the management and use of public sanitary conveniences in districts where the Act of 1890 has been adopted, see that Act (53 & 54 Vict. c. 59, s. 20), *post*.

Drains,
privies, &c.,
to be properly
kept.

40. Every local authority shall (a) provide that all drains, water-closets, earthclosets, privies, ashpits, and cesspools, within their district be constructed and kept so as not to be a nuisance or injurious to health.

(a) Here a duty is imposed upon the local authority which requires much earnest attention. The consequences of default appear in section 299, *post*.

Examination
of drains,
privies, &c.,
on complaint
of nuisance.

41. On the written application of any person to a local authority, stating that any drain, (a) watercloset, earthcloset, privy, ashpit, or cesspool, on or belonging to any premises within their district is a nuisance (b) or injurious to health (but not otherwise), the local authority may, by writing, (c) empower their surveyor or inspector of nuisances, after twenty-four hours' written notice (d) to the occupier of such premises, or in case of emergency (e) without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain, watercloset, earthcloset, privy, ashpit, or cesspool. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination, is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination, appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing (f) to be given to the owner or occupier (g) of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; (h) and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses (i) incurred by them in so doing, or may by order declare the same to be private improvement expenses. (k)

(a) See the definition of a drain in section 4, *ante*, p. 18. For the purposes of this section the expression may have an extended meaning in districts where the local authority have adopted the provisions of the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59). Section 19 of that Act provides as follows:—(1) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain, an application may be made under section 41 of the Public Health Act, 1875 (relating to complaints as to nuisances from drains), and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction. (2) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly. (3) For the purposes of this section the expression "drain" includes a drain used for the drainage of more than one building. See this section and the notes thereto, *post*.

(b) From the construction which has been placed on similar language in sections 47 and 91, it may be inferred that if the nuisance complained of consists of something offensive to the senses, it is not necessary that it should also be injurious to health. See *Malton Urban Sanitary Authority v. Malton Farmers' Manure Company*, 4 Ex. D. 305; 49 L. J. M. C. 90; 40 L. T. (N.S.) 755; 44 J. P. 155; *Banbury Local Board v.*

Page, 8 Q. B. D. 97; 51 L. J. M. C. 21; 45 L. T. (N.S.) 759; 30 W. R. 415; 46 J. P. 184; *Bishop Auckland Local Board v. Bishop Auckland Iron Company*, 10 Q. B. D. 138; 52 L. J. M. C. 38; 31 W. R. 288; 48 L. T. (N.S.) 223; 47 J. P. 389. As to the liability of an owner or occupier for damage done by the escape of sewage in consequence of a defective drain on his own premises, see *Humphries v. Cousins*, 2 C. P. D. 239; 46 L. J. Q. B. 56; 41 J. P. 280.

**Note to
Section 41.**
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(c) This should be under the hand of the clerk of the authority, and a notice of the authority should be entered on the board minutes.

(d) Query, who is to give this notice? Apparently either the clerk, or surveyor, or inspector of nuisances, under the direction of the local authority. As to the authentication and service of the notice, see sections 266, 267, *post*.

(e) The local authority will determine in the first place whether there is a case of emergency, but this is open to controversy in subsequent proceedings. There should be an entry on the board minutes to the effect that the particular case is one of emergency.

(f) See sections 266, 267, *post*, as to the authentication and service of this notice.

(g) See section 306, *post*, under which the owner may be empowered to enter to do these works when the occupier prevents him. It will be observed that the notice may be given to either the occupier or the owner, although by a subsequent clause the expenses incurred by the local authority in doing the works are to be recovered from the owner only. In an action for a nuisance arising out of defective drains, the occupier and not the owner is *prima facie* liable (*Russell v. Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449), but the owner may be liable on indictment if it appears that he erected the building, &c., so as to create the nuisance, or so that it is likely to produce a nuisance after it has been let to a tenant. *R. v. Peddy*, 3 L. J. M. C. 119; 1 A. & E. 822. And see notes to section 94, *post*, p. 116.

(h) See section 251, *post*, as to the recovery of this penalty.

(i) As to the recovery of these expenses, see note (e) to section 21, *ante*, p. 53. The order of the local authority is conclusive and cannot be controlled or altered by the justices in proceedings to enforce payment, though an appeal will lie to the Local Government Board under section 268, *post*. See the notes to section 36, *ante*, p. 64.

(k) See section 213, *post*.

SCAVENGING AND CLEANSING.

Regulations as to Streets and Houses.

42. Every local authority may, and when required by order of the Local Government Board shall, (a) themselves undertake or contract for—

Local authority to provide for cleansing of streets and removal of refuse.

The removal of house refuse from premises : (b)

The cleansing of earthclosets, privies, ashpits, and cesspools; either for the whole or any part of their district: Moreover, every urban authority and any rural authority invested by the Local Government Board with the requisite powers (c) may, and when required by order of the said board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district. (d)

All matters collected by the local authority or contractor in pursuance of this section (e) may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act: and any profits (f) thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate (g) out of which expenses incurred under this section by that authority in such contributory place are defrayed.

Section 42.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds : (h) Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance. (i)

(a) It may be contended since the case of *Reg. v. Walker*, L. R. 10 Q. B. 355 ; 44 L. J. M. C. 169 ; 33 L. T. 167 ; 39 J. P. 438, that if this order be disobeyed the local authority may be indicted for a misdemeanor. This is not like orders of the Local Government Board under the Poor Law Amendment Acts, which are enforceable by penalties according to 4 & 5 Will. 4, c. 76, s. 99. But if the local authority be not liable to an indictment, they will be open to proceedings by *mandamus*, according to section 299, *post*.

(b) As to the removal of refuse from mews and other premises, see section 50, *post*, p. 76.

In districts where the local authority have adopted the Public Health Acts Amendment Act, 1890, it is provided by section 26 of that Act that where a local authority themselves undertake or contract for the removal of house refuse they may make bye-laws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the local authority undertake or contract for. See the section and the notes thereto, *post*.

House refuse does not extend to dust and ashes, the exclusive produce of manufactories. *Lyndon v. Standbridge*, 26 L. J. Ex. 386 ; 2 H. & N. 45 ; 29 L. T. (o.s.) 111. And see *Law v. Dodd*, 17 L. J. M. C. 65 ; 1 Ex. 845 ; 10 L. T. (o.s.) 286, 309. Ashes arising from coals burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber and other materials for carrying on the business of a pianoforte manufacturer, were held not be house refuse in *Gay v. Cadby*, 2 C. P. D. 391 ; 46 L. J. M. C. 260 ; 36 L. T. (n.s.) 410 ; 41 J. P. 503. The local authority under an order of the Local Government Board are bound to remove refuse from a workhouse, even though such workhouse may by a local Act be rated at a less amount than other property in the parish or district. *Holborn Union (Guardians of) v. St. Leonard's (Vestry of), Shoreditch*, 2 Q. B. D. 145 ; 46 L. J. Q. B. 36 ; 35 L. T. (n.s.) 400 ; 24 W. R. 40 ; 40 J. P. 740.

The local authority are not bound to remove articles improperly placed in a dust bin, such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." Where such articles were removed, and were afterwards abstracted by the servants of a metropolitan vestry, it was held that the contractor for the removal of the house refuse was not entitled to compensation in respect of them. *Collins v. Paddington (Vestry of)*, 48 L. J. Q. B. 345 ; 40 L. T. (n.s.) 843 ; 27 W. R. 504 ; 43 J. P. 367.

A police magistrate acting under 18 & 19 Vict. c. 120, s. 129, decided that certain ashes from the furnaces of a hotel were not "refuse of trade" within this section, and declined to state a case on the ground that his decision was by the section final and conclusive, and that no point of law arose. It was held that there was a point of law involved, and the magistrate was required to state a case. *Reg. v. Bridge*, 24 Q. B. D. 609 ; 59 L. J. M. C. 49 ; 62 L. T. (n.s.) 297 ; 38 W. R. 464 ; 54 J. P. 629. On a case being stated, it appeared that the appellants had refused to remove from the respondent's hotel, unless paid a reasonable sum for so doing, the ashes and clinkers produced in the furnaces of boilers used to generate steam for supplying power for the electric lighting of the respondent's hotel, for heating the public rooms and passages, for cooking, and for working the lift and pumping water. It was held that the ashes and clinkers were domestic refuse, and not the refuse of a trade manufacture or business. *St. Martin's Vestry v. Gordon*, 59 L. J. M. C. 131 ; 62 L. T. (n.s.) 835 ; 54 J. P. 791 ; 6 T. L. R. 358 ; affirmed in C. A. [1891] 1 Q. B. 61 ; 60 L. J. M. C. 37 ; 64 L. T. (n.s.) 243 ; 39 W. R. 295 ; 55 J. P. 437 ; 7 T. L. R. 71. On the other hand, clinkers from the boilers of a steam laundry were held not to be house refuse in *London and Provincial Laundry Company v. Willesden Local Board* [1892], 2 Q. B. 271 ; 67 L. T. (n.s.) 499 ; 40 W. R. 557 ; 56 J. P. 696.

(c) See section 276, *post*.

(d) Note the distinction. The authority may be compelled to cleanse the streets, but may water the streets at their discretion.

(e) See *Collins v. The Vestry of Paddington*, *supra*. Matters collected must not be disposed of so as to cause injury to other persons. For instance, in *Atkinson v. Corporation of Huddersfield* ("The Times," 20th April, 1893), CHITTY, J., granted an injunction against the defendant corporation from discharging snow, street sweepings, and other refuse into a river at a point above the mills of the plaintiff so as to cause injury to the plaintiffs by the pollution of the river.

(f) It is presumed that the contractor may contract to receive these matters for his own profit, and thereby reduce the amount otherwise payable to him.

(g) There is some little inaccuracy here. There is no account of any fund or rate in a rural authority's accounts. The expenses referred to would be general expenses, unless the Local Government Board make special order in the case, and the profit should be carried to the account of such expenses, as the case may be.

(h) As to the recovery of this penalty, see section 251, *post*.

(i) It is not enough that the matters are produced upon the premises; they must be intended to be removed for sale or for use, as, for instance, for manure, and until removed they must be kept so as not to create a nuisance; so that if the matters create a nuisance, which word must here, it is presumed, signify a public nuisance, they may be removed by the local authority or the contractor without obstruction.

Under 57 Geo. 3, c. 29, ss. 59, 60, the scavenger of a metropolitan district was entitled to take away from houses and premises "their soil, ashes, cinders, rubbish, dust, dirt, and filth." It was held that these words included only such dust, &c., as were in the contemplation of the owner's rubbish or refuse, and which he desired to dispose of in that character. Therefore, where brewers burnt coals in the process of brewing, which coals were only partially consumed by having once passed through the fires, and removed them mixed with the dust and ashes arising from the same fires to other premises occupied by them where they used them for heating water to cleanse their casks, it was held that the scavenger was not entitled to claim any of the articles so removed. *Filbey v. Combe*, 2 M. & W. 677; 1 Jur. 721.

43. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets, privies, ashpits, and cesspools, fail, without reasonable excuse, after notice in writing (a) from the occupier of any house within their district requiring them to remove any house refuse, or to cleanse any earthcloset, privy, ashpit, or cesspool, belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period. (b)

Penalty on neglect of local authority to remove refuse, &c.

(a) It is not clear how this notice is to reach the local authority, who meet only at intervals. The suggestion which occurs is that it should be served upon their clerk at the offices of the board.

(b) See as to the recovery of this penalty, section 257, *post*. It is presumed that the justices can settle the amount of the penalty to be paid by the authority. The corporate property of the authority, whether urban or rural, would be liable to a distress for the payment of this penalty. Having regard to the penalty imposed by this section, it may be doubted whether an occupier could maintain an action for damages through the failure to remove refuse, &c. See *Ellis v. Strand District Board of Works*, 67 L. T. (N.S.) 307; 8 T. L. R. 739; and *Saunders v. Holborn District Board of Works* [1895], 1 Q. B. 64; 64 L. J. Q. B. 101; 71 L. T. (N.S.) 519; 43 W. R. 26; 11 T. L. R. 5.

44. Where the local authority do not themselves undertake or contract for—

Power of local authority to make bye-laws

The cleansing of footways and pavements (a) adjoining any premises,

Section 44.

The removal of house refuse(*b*) from any premises,

The cleansing of earthclosets, privies, ashpits, and cesspools belonging to any premises,

they may make bye-laws imposing the duty(*c*) of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

An urban authority may also make bye-laws(*c*) for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish,(*d*) and for the prevention of the keeping of animals(*e*) on any premises so as to be injurious to health.

(*a*) These are included under the term streets in section 42. The local authority may contract for the cleansing of the road, and make bye-laws for the cleansing of footways and pavements, but they cannot make bye-laws for the cleansing of the roads.

(*b*) As to what is house refuse, see section 42, note (*b*), *ante*, p. 70.

(*c*) As to the making, confirmation, and enforcement of these bye-laws, see sections 182-4, and section 257. The bye-laws under this section are confined to the imposing of the duty. The section does not authorise any direction as to the manner of cleansing, except so far as prescribing the intervals.

In districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), is in force, reference should be made to section 26 of that Act, which provides as follows:—

(1.) An urban authority may make bye-laws in respect of the following matters, namely:

(*a*.) For prescribing the times for the removal or carriage through the streets of any faecal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district;

(*b*.) For providing that the vessel, receptacle, cart, or carriage used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid;

(*c*.) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage.

See the section and the notes thereto, *post*.

(*d*) Sweeping mud into a sewer was held to be an offence against 18 & 19 Vict. c. 120, s. 205, which forbids the sweeping into any sewer of any "soil, rubbish, or filth, or any other thing." *Metropolitan Board of Works v. Eaton*, 50 L. T. (N.S.) 634; 48 J. P. 611.

(*e*) See further the provisions of section 91, as to nuisances arising out of some of these matters.

In *Everett v. Grapes*, 3 L. T. (N.S.) 669; 25 J. P. 644, it was held under 5 & 6 Will. 4, c. 76, s. 90, that a bye-law aimed against keeping pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad. But see *Wanstead Local Board of Health v. Wooster*, 55 L. T. 81; 37 J. P. 403; 38 J. P. 21, where a bye-law preventing any occupier of a house keeping pigs within 100 feet of a dwelling-house was held to be valid on the ground that the doing so was likely to be a nuisance, that it might be prohibited altogether. It was decided in the same case that the bye-law might require the removal of filth, &c., without any previous requisition by the local authority. But the principle of this decision was held to apply only to urban and not to rural districts. Therefore, where a rural authority having urban powers under this section made a bye-law prohibiting the keeping of swine within the distance of 50 feet from any dwelling-house within their district, it was held that the bye-law was unreasonable and bad. *Heap v. Burnley Union*, 12 Q. B. D. 617; 53 L. J. M. C. 76; 32 W. R. 661; 48 J. P. 359. Lord COLERIDGE, C.J., said it was impossible to attempt to lay down what under all circumstances would be a reasonable bye-law; but it seemed to him unreasonable to say, that in country districts nobody should keep a pig within 50 feet of his dwelling-house. The corresponding section of the Public Health (Ireland) Act, 1878 (41 & 42

Vict. c. 52), s. 54, enables urban authorities to make bye-laws for "the regulation of the keeping of animals upon any premises, or for the prevention of such keeping so as to be injurious to health." A bye-law made under this section was as follows: "No swine shall be kept in any yard within a distance of 21 feet from a dwelling-house or public building or any building in which any persons may be or may be intended to be employed in any manufacture, trade, or business without the special permission of the sanitary authority." It was held that this bye-law was valid. *Lutton v. Doherty*, 16 L. R. Ir. 493.

**Note to
Section 44.**

It is not necessary in order to procure a conviction under such a bye-law that a nuisance has been caused by the defendants' disobedience of the bye-law. *Tong Street Local Board v. Seed*, 39 J. P. 278. A bye-law made by an urban authority imposed a penalty for keeping swine within 50 yards of a dwelling-house. The defendant, in the course of his business, on receiving orders for the sale of pigs, used to bring them into the urban district within 50 yards of a dwelling-house in the morning and keep them there till the evening, when they were sent off by railway or otherwise. The pigs were not fed on the premises nor even allowed to remain there at night. And it was held that there was, nevertheless, a keeping of the swine within 50 yards of the dwelling-house, contrary to the bye-law. *Steers v. Manton*, 57 J. P. 584. See further as to the keeping pigs, section 47, sub-section (1), *post*, p. 74.

45. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust, ashes, and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act. Power to provide receptacles for deposit of rubbish.

As to the acquisition of land for the purposes of this section, see section 175, *post*; and as to the expense, see section 207, *post*.

In districts where the Public Health Acts Amendment Act, 1890, has been adopted, the local authority may make regulations and bye-laws for sanitary conveniences provided by them. See section 20 of the Act, *post*.

46. Where, on the certificate of the medical officer of health or of any two medical practitioners,^(a) it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing^(b) to the owner or occupier^(c) of such house or part thereof to whitewash, cleanse or purify the same, as the case may require. Houses to be purified on certificate of officer of health or of two medical practitioners.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed, cleansed, or purified, and may recover in a summary manner the expenses^(d) incurred by them in so doing from the person in default.^(e)

(a) They must be persons registered under 21 & 22 Vict. c. 90, and 49 & 50 Vict. c. 48. Certificates signed by unregistered persons are invalid: see 21 & 22 Vict. c. 90, s. 37, and 23 Vict. c. 7.

(b) See as to this notice sections 266, 267, *post*. The authority may select either the owner (defined in section 4, *ante*, p. 6), or the occupier.

(c) See section 306, *post*, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(d) See as to the recovery of the penalty and expenses section 257, *post*. And see note (e) to section 21, *ante*, p. 53.

**Note to
Section 46.**

(e) Further provisions are contained in the clauses relating to nuisances, sections 91—7, *post*. See also the provisions of the Factory Acts, 1878 (41 & 42 Vict. c. 16, ss. 33—7), 1883 and 1891. These Acts, which relate to certain factories and to bakehouses, are set out in the Appendix. See also the provisions of the Infectious Disease Prevention Act, 1890 (53 & 54 Vict. c. 34), s. 5, *post*, and the Housing of the Working Classes Act, 1890, *post*. The latter Act deals with houses in a condition dangerous to health, so as to be unfit for human habitation.

Penalty in
respect of
certain
nuisances on
premises.

47. Any person who in any urban district—

- (1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person ;(a) or
- (2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice(b) to him from the urban authority to remove the same ; or
- (3.) Allows the contents of any watercloset, privy, or cesspool, to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued,(c) and the urban authority shall(d) abate or cause to be abated every such nuisance, and may recover in a summary manner(e) the expenses incurred by them in so doing from the occupier(f) of the premises on which the nuisance exists.

(a) Keeping swine in a city is a nuisance at common law. *Reg. v. Wigg*, Salk. 460. The sub-section is expressed very generally, and seems to give a public remedy for a private grievance. The bye-law referred to in section 44, *ante*, p. 72, regulates the erection of a pigstye whether a nuisance to any person arises or not ; but if a nuisance be caused, the bye-law will not protect the offender. See as to swine in the metropolis (54 & 55 Vict. c. 76, s. 17). *Chelsea (Vestry of) v. King*, 34 L. J. M. C. 9 ; 29 J. P. 39.

The sub-section applies not merely to the keeping of swine in improper places, but to keeping in an improper manner. *Digby v. West Ham Local Board*, 22 J. P. 304. It is not necessary to prove that the keeping of the swine is injurious to health. *Banbury Sanitary Authority v. Page*, 8 Q. B. D. 97 ; 51 L. J. M. C. 21 ; 45 L. T. (N.S.) 759 ; 30 W. R. 415 ; 46 J. P. 184. It is clear swine are not to be kept in a dwelling-house at all.

(b) See as to this notice, which, as it seems, should be given by the clerk of the authority, sections 266, 267.

(c) See section 251, as to the recovery of the penalty. It would seem that the continuance referred to, except under sub-section (2), must be *after the conviction*, for there is no other date from which the time is to be calculated under sub-sections (1) and (3).

(d) This appears to be a peremptory direction to the urban authority, the default of which may bring them under the operation of section 299.

(e) As to the recovery of these expenses, see note (e) to section 21, *ante*, p. 53, and section 251, *post*.

(f) Note here that the recovery is to be from the occupier ; no recourse is given against the owner.

It will be considered that this section applies to such matters as would generally form nuisances to which section 91, *post*, and the subsequent sections would apply. Then recourse may be had against the owner as well as the occupier. The above section does not require proof of any injury to health. See *Banbury Sanitary Authority v. Page*, *supra*.

*Offensive Ditches and Collections of Matter.***Section 48.**

48. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, (a) summon the local authority of such adjoining district to appear before a court of summary jurisdiction (b) to show cause why an order should not be made by such court for cleansing such watercourse or open ditch and for executing such permanent or other structural works as may appear to such court to be necessary; and such court, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order (c) with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof and the time and mode of payment, as to such court may seem reasonable.

Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.

(a) It is presumed that this application must be made by an officer of the local authority, who will be directed to make such application by order of the board, and enter it on the minutes. It cannot be necessary that the application should be under seal. As to the appearance of the authority summoned, see section 259, *post*.

(b) See the definition in section 4, *ante*, p. 22.

(c) This order will justify the entry on any lands when the entry may be necessary for the execution of the order. As to compensation, see section 308, *post*. As to the time allowed for appealing from the order, see section 269, *post*, and *Reg. v. Barnet Rural Sanitary Authority*, 1 Q. B. D. 558; 45 L. J. M. C. 105; 35 L. T. (N.S.) 362; 41 J. P. 6. The Woburn Rural Sanitary Authority summoned the Newport Pagnell Rural Sanitary Authority under the above section, for not cleansing a ditch situated on the boundary of, but in, the Newport Pagnell district. The justices made an order on the Woburn authority to cleanse the ditch, the nuisance being caused by sewage from the Woburn district. The Woburn authority contended that they could not comply with the order without committing a trespass, but it was held that such a defence could not be set up under the above section, and that the order was right. *Woburn Sanitary Authority v. Newport Pagnell Sanitary Authority*, 51 J. P. 356.

49. Where in any urban district it appears to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; (a) and if such notice is not complied with within twenty-four hours from the service thereof, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the urban authority, (b) and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid, on demand, to the owner of the matter removed.

Removal of filth on certificate of inspector of nuisances.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner (c) from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner. (d)

(a) A pier and harbour company, in whom a harbour was vested, were held bound, under 18 & 19 Vict. c. 121, s. 12, to remove sea-weed, which, by the action of the sea

**Note to
Section 49.**

was drifted into the harbour, and being left there became a nuisance. *Margate Pier and Harbour Proprietors v. Margate Town Council*, 20 L. T. (N.S.) 564; 33 J. P. 437. An accumulation of stable dung, which may be dealt with under this section, may also be within the provisions of section 91—94, *post*. *Smith v. Waghorn*, 27 J. P. 744.

(b) No express power is given in this clause to the officer to enter and remove the offensive matter; but it is implied, otherwise there would be no expenses in the execution of the section. A similar clause existed in 11 & 12 Vict. c. 63, s. 59, and in 18 & 19 Vict. c. 121, s. 18; but the latter Act took effect after an order of justices for the abatement of a nuisance. The present Act adopts the provisions in the latter Act for the disposal of the surplus, and not that of the earlier Act, so that the owner may sometimes be benefited by the action of the local authority. As to the sale of the matters, see section 101, *post*. It must be noticed that a sale is not absolutely required, but they may be otherwise disposed of, perhaps by deposits on lands of the local authority, on payment of the value *minus* the cost of removal.

(c) See, as to the recovery of these expenses, note (e) to section 21, *ante*, p. 53, and section 251, *post*.

(d) See the definition in section 4, *ante*, p. 6.

Periodical
removal of
manure from
mews and
other pre-
mises.

50. Notice may be given by any urban authority (by public announcement^(a) in the district or otherwise) for the periodical removal of manure or other refuse matter from mews, stables, or other premises; and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable, without further notice, to a penalty not exceeding twenty shillings^(b) for each day during which such manure or other refuse matter is permitted to accumulate.

(a) This word was used in 29 & 30 Vict. c. 90, s. 53, from which this clause is taken. It is of no definite meaning. An advertisement in the district of the local authority, and printed placards affixed to the walls of mews, stables, or other places, seem to satisfy the term. Compare section 36 (2) of the Public Health (London) Act, 1891 (53 & 54 Vict. c. 76).

(b) As to the recovery of this penalty, see section 251, *post*. The accumulation referred to must be after the notice

WATER SUPPLY.

Powers of Local Authority in relation to Supply of Water.

General
powers for
supplying
district with
water.

51. Any urban authority may^(a) provide their district, or any part thereof, and any rural authority may^(a) provide their district or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes,^(b) and for those purposes, or any of them, may—

- (1.) Construct and maintain waterworks,^(c) dig wells, and do any other necessary acts; and
- (2.) Take on lease or hire any waterworks,^(c) and (with the sanction of the Local Government Board) purchase any waterworks,^(c) or any water or right to take or convey water, either within or

without their district, *(d)* and any rights, powers, and privileges of any water company ; *(e)* and

(3.) Contract *(f)* with any person for a supply of water.

(a) These words are in themselves permissive and enabling, but if the local authority do not avail themselves of this power where water is required, and they can procure it, they will be in default, and proceedings may be taken under section 299, *post*. Although this section imposes on a rural sanitary authority a duty to provide water for their district, they cannot promote a private bill to attain that end. *Cleverton v. St. Germain's Rural Sanitary Authority*, 56 L. J. Q. B. 83 ; 3 T. L. R. 43. As to the powers of a parish council in relation to water supply, see section 8 (1 *e, i, k*) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), but it is specially provided by sub-section (3) of that section that nothing in that section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

The Public Health (Water) Act, 1878 (which is set out at length, *post*), provides by section 3 that it shall be the duty of every rural sanitary authority to see that every occupied dwelling-house within their district has, within a reasonable distance, an available supply of water sufficient for the consumption and use for domestic purposes of the inmates of the house. It may, therefore, be the duty of a rural sanitary authority to provide a water supply. The same section provides that nothing in the Act is to be deemed to relieve the authority of their duty to provide a water supply under the Act of 1875. Section 11 of the Act of 1878 provides that the Local Government Board may, if they think fit, by order invest any urban sanitary authority with all or any of the powers and duties which are by that Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

(b) By 11 & 12 Vict. c. 63, s. 75, the power was limited to private purposes. This section extends it to public purposes also, but this general language must be qualified by the nature and extent of the district. See also *West Surrey Water Company v. Guardians of Chertsey Union*, cited in the notes to section 52, *post*, p. 79.

(c) See the definition of *waterworks* in section 4, *ante*, p. 21. This sanction of the Local Government Board is introduced for the first time, and will operate to protect both the owners of water rights and the interests of the ratepayers. As this section enables the local authority to purchase, so section 63, *post*, p. 89, provides for the sale to them.

An agreement (sanctioned by Act of Parliament) was entered into between two water companies, by which it was agreed that company A. should take over the works, provide for a mortgage debt, and pay interest on the shares of company B. This transaction was carried into effect by an indenture of January, 1857, which provided that if company A. (or their intended assignees, the corporation or local board of health), being desirous of becoming the absolute and unrestricted owners of the works of company B., subject only to the mortgage debt, should "on or before any 25th December, after having given to company B. six months' previous notice of their desire to avail themselves of the option thereby given, pay unto company B. 46,246*l.*, the amount of their share capital, the party so paying should become absolutely entitled to the works. In June, 1870, the corporation, who had acquired the interest of company A., gave notice to company B. of their intention to pay the 46,246*l.* on the 25th December following, but were unable, from want of funds, to carry out the purchase. In June, 1871, they again gave notice that they would pay the money on the 25th December, 1871 :—Held, that the corporation by giving the first notice and failing to act upon it, had not lost the right given to them by the deed of January, 1857, of purchasing after six months' notice on or before any 25th of December. *Ward v. Wolverhampton Waterworks Company*, L. R. 13 Eq. 243 ; 41 L. J. Ch. 308 ; 25 L. T. (N.S.) 487 ; 30 W. R. 85. A water board was constituted by special Act with the right of supplying water within the boundaries of two boroughs and certain outlying districts, provided that when so required by the sanitary authority of any such outlying district the board should sell to such sanitary authority the mains, pipes, and fittings belonging to the board within that district at a price to be fixed, in default of agreement, by an arbitrator, and that after such sale

**Note to
Section 51.**

the board should cease to supply water within such district. In an arbitration under this proviso, between the board and an outlying district, it was held by the House of Lords that in fixing the price the basis of calculation should be merely the value of the mains, pipes, and fittings regarded as plant *in situ*, capable of earning a profit, and that the arbitrator must not include in the price compensation to the board for the loss of the right to supply water in the outlying district after the sale. *Stockton and Middlesbrough Water Board v. Kirkleatham Local Board* [1893], A. C. 444; 63 L. J. Q. B. 56; 69 L. T. (N.S.) 661; 57 J. P. 772; 1 R. 288.

The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), *post*, provides that the construction or erection of reservoirs or other works of a permanent character for the supply of water to any sanitary or other local authority or water company, shall be deemed to be an improvement of land within the meaning of 27 & 28 Vict. c. 114, s. 9, and shall be sanctioned by the commissioners if it can be shown to their satisfaction that such reservoirs or works will effect a permanent yearly increase in the value of settled lands, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of such works is to be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid (section 5). Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under the Act, may enter into any agreement for the supply of water to any sanitary or other local authority, for any term not exceeding the number of years during which the cost of the improvement or any part of it is made a charge upon the estate: Provided that every such agreement be approved of by the commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner (section 6). The commissioners referred to are the Inclosure Commissioners, afterwards the Land Commissioners under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 48, and now the Board of Agriculture under 52 & 53 Vict. c. 30, s. 2.

As to the rating of waterworks provided by a local authority, see *Reg. v. West Middlesex Waterworks Company*, 1 E. & E. 716; 28 L. J. M. C. 135; 32 L. T. (O.S.) 388; *Chelsea Waterworks Company v. Overseers of Putney*, 8 W. R. 607; *Worcester (Mayor of) v. Droitwich Assessment Committee*, 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. (N.S.) 186; 25 W. R. 336; 41 J. P. 355; *Peterborough (Mayor of) v. Stamford Union*, 31 W. R. 949; *Reg. v. South Staffordshire Waterworks Company*, 16 Q. B. D. 359; 55 L. J. M. C. 88; 54 L. T. (N.S.) 786; 34 W. R. 242; 50 J. P. 20; *Dewsbury and Heckmondwike Waterworks Board v. Penistone Union*, 17 Q. B. D. 384; 55 L. J. M. C. 121; 54 L. T. (N.S.) 592; 34 W. R. 662; *Reg. v. Birstall Local Board*, 1 T. L. R. 541; *Merthyr Tydfil Local Board v. Merthyr Tydfil Union* [1891], 1 Q. B. 186; 60 L. J. M. C. 42; 63 L. T. (N.S.) 647; 39 W. R. 255; 55 J. P. 294.

(d) It will be seen that section 332, *post*, prevents the water rights of proprietors from being injuriously affected without their consent; but as section 176 enables the provisions of the Lands Clauses Act to be put in force, it is presumed that when any water rights would be so affected, they may be purchased compulsorily. Section 175 enables land and certain obstructions to the supply of water to be purchased.

In *Bush v. Trowbridge Waterworks Company*, L. R. 10 Ch. 459; 44 L. J. Ch. 645; 33 L. T. (N.S.) 137; 23 W. R. 641; 39 J. P. 660, it was held that the abstraction by a waterworks company from a stream did not entitle a riparian proprietor below to require the company to treat for the purchase of his interest in the stream, but only entitled him to compensation as for land injuriously affected. But when a company had power to divert the whole of a stream, and gave notice of their intention to do so, it was held that they were bound to purchase the entire interest of the riparian proprietors below. *Stone v. Mayor, &c., of Yeovil*, 2 C. P. D. 99; 46 L. J. C. P. 137; 36 L. T. (N.S.) 279; 25 W. R. 240; 42 J. P. 212, following *Ferrand v. Corporation of Bradford*, 21 Beav. 412. It is to be observed that a riparian owner has merely a right to the use of the water as it passes through his property. He cannot divert it into a reservoir for the purpose of disposing of it to the inhabitants of a town. *Swindon Waterworks Company v. Wilts and Berks Canal Navigation Company*, L. R. 7 H. L. 697; 45 L. J. Ch. 638; 33 L. T. (N.S.) 513; 40 J. P. 804. And a local board possessing land on the bank of a stream have no greater right. *Owen v. Davis*, W. N. (1874), p. 175. A riparian owner cannot, except as against himself, confer on another person any right to use the water, and such user

is wrongful if it affects the rights of other proprietors. *Ormerod v. Todmorden Mill Company*, 11 Q. B. D. 155; 52 L. J. Q. B. 445; 31 W. R. 759; 47 J. P. 532; following *Stockport Waterworks Company v. Potter*, 3 H. & C. 300; 10 Jur. (N.S.) 1005; 10 L. T. (O.S.) 748; 31 L. J. Ex. 9. But an injunction will not be granted to restrain such user unless damage be proved. *Kensit v. Great Eastern Railway*, 27 Ch. D. 122; 54 L. J. Ch. 19; 51 L. T. (N.S.) 862; 32 W. R. 885; affirming 23 Ch. D. 566; 47 J. P. 534.

Where a waterworks company were empowered by local Acts to take and use certain water on condition of their making a compensation reservoir for storing the water during floods for the benefit of millowners lower down, it was held that they were bound to return the water from such reservoir without fouling it. *Clowes v. Staffordshire Potteries Company*, L. R. 8 Ch. 126; 42 L. J. Ch. 107; 27 L. T. (N.S.) 521; 36 J. P. 760; 21 W. R. 32.

As regards the abstraction of underground streams, see the notes to section 17, *ante*, p. 49.

(e) See the definition in section 4, *ante*, p. 20.

(f) A landowner supplying water to her own tenants agreed with the rural sanitary authority to supply two villages with water upon the same terms upon which she supplied her own tenants. In consequence, however, of a report by the medical officer of health, the rural authority entered into further negotiations with the landowner and with a neighbouring corporation in reference to the supply. The landowner then gave three months' notice to the consumers of water in the two villages (other than her own tenants) that she would at the expiration of that time cease to supply them with water. The rural authority then applied for an injunction against her, and proved that water could not be procured from wells in the district, and that a wholesome supply could only be otherwise procured from a long distance. *NORTH, J.*, granted the injunction on the ground that the notice given was not reasonable under the circumstances. *Hunslet Union (Guardians of) v. Ingram*, 15 M. C. C. 186 ("The Times," 27th March, 1893).

52. Before commencing to construct waterworks(*a*) within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament(*b*) to supply water, the local authority shall give written notice to every water company(*c*) within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks(*a*) within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing(*d*) to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable(*e*) or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act.(*f*)

(a) See note (c) to last section. The word "waterworks" here means new waterworks, and does not apply to additions to or improvements of substantial waterworks previously existing, as, for instance, by the construction of an additional reservoir. *Cleveland Water Company v. Redcar Local Board* [1895], 1 Ch. 168; 64 L. J. Ch. 64; 43 W. R. 90; 59 J. P. 7; 11 T. L. R. 28. Nor does it apply to the construction of works by a local authority for the supply of water for their own use, as for flushing their sewers. *West Surrey Water Company v. Guardians of Chertsey Union* [1894], 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. (N.S.) 368; 43 W. R. 6; 59 J. P. 167; 8 R. 696; 10 T. L. R. 581.

(b) In 11 & 12 Vict. c. 63, s. 75, the word *established* only was used, and though the law officers of the Crown had advised that this meant established by Act of Parliament, that opinion had not been judicially confirmed. The text, however, confirms that view for the future. It is presumed that the Act of Parliament referred

Note to
Section 51.

Restriction
on con-
struction of
waterworks
by local
authority.

**Note to
Section 52.**

to is a special Act, and that the order is a provisional order of the Board of Trade respectively applying to the particular company.

The undertaking of a waterworks company was transferred by statute to a borough. The profits of the waterworks were under a subsequent statute to be transferred to the borough improvement fund, or, at the option of the corporation, to be applied in reducing the price of water to consumers. It was held that the corporation were supplying water for their own profit, and were a water company within the meaning of the above section. *Wolverhampton (Corporation of) v. Bilston (Commissioners of)* [1891], 1 Ch. 315; 39 W. R. 394; 7 T. L. R. 162. This point was not argued, however, in the Court of Appeal. See W. N. [1891], p. 56; 7 T. L. R. 374.

(c) See section 266, as to this notice. If notice be not given, the local authority will be liable to an injunction from the High Court of Justice. A water company is not entitled to a notice under this section unless it is able and willing to supply water within the district. *Richmond Waterworks Company v. Vestry of Richmond*, *infra*.

There are many cases where companies have been established for the supply of water, but have not acted on their powers or have failed to carry their powers into effect. Nevertheless, it seems that notice should be given to them.

The water company must be such a company as is previously mentioned in the section, for only such a company can be said to have limits of supply.

(d) A waterworks company is not *able and willing* within the meaning of this section, unless it has both the necessary powers and the necessary supply of water. The R. company had the necessary powers but no water, and the S. company had the necessary supply of water, but no power within the district. The R. company sold its plant to the S. company, and certain members of company S. bought all the shares of company R. with the intention of allowing company S. to exercise the powers of company R. It was held that the powers could not be so delegated, and that neither company was *able and willing* within the meaning of the Act. *Richmond Waterworks Company v. Vestry of Richmond*, 3 Ch. D. 82; 45 L. J. Ch. 441; 34 L. T. (N.S.) 480. In the case of the *Newhaven and Seaford Water Company v. Newhaven Local Board* ("Local Government Chronicle," 1882, p. 515; L. T. [1882], p. 226), HALL, V.C., held that a water company were "able and willing," within the meaning of this section, though their works were only in progress, and they had no completed works available for the supply of water. It seems doubtful whether the ability and willingness of the water company is a question coming within the authority of the arbitrators to decide under this section. *Bognor Water Company v. Bognor Local Board*, 70 L. T. (N.S.) 402, and see *Re Yeaton Local Board and Yeaton Waterworks Company*, 41 Ch. D. 52; 60 L. T. (N.S.) 550, reversing 59 L. T. (N.S.) 844.

(e) The arbitrator must determine what are reasonable purposes. The term is in itself somewhat vague.

(f) See section 179, *post*. The plaintiff company's special Act rendered it unlawful for the defendant local board to construct waterworks within the plaintiffs' limits of supply during four years after the passing of the special Act, so long as the plaintiffs were able and willing to supply water proper and sufficient. The plaintiffs made some unsuccessful attempts to find water, and before they succeeded in doing so the defendants served them with notice of their intention to construct waterworks under the Public Health Act, 1875, unless they were informed within one month that the plaintiffs were able and willing to supply the water. The matter went to arbitration, but the company finding that the local board were still forwarding a scheme of water supply moved for an injunction to restrain the board from commencing or threatening to construct works, and from proceeding to arbitration. The motion stood over to await the award which was given in favour of the plaintiffs:—Held, that the defendants must pay the costs of the action, setting off any costs incurred by the defendants by reason of the plaintiffs seeking to restrain the arbitration. *Bognor Water Company v. Bognor Local Board*, 70 L. T. (N.S.) 402.

As to construction of reservoirs.

53. At least two months(a) before commencing to construct under the provisions of this Act(b) any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons)(c) the local authority shall give notice(d) of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.(e)

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority^(f) at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as hereinafter mentioned, unless such objection is withdrawn.^(g) Section 53.

The Local Government Board may, on application^(h) of the local authority, appoint an inspector to make inquiry⁽ⁱ⁾ on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed ; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing with such modifications (if any) as they may deem necessary the intended work.^(k)

(a) These must be calendar months. See 52 & 53 Vict. c. 63, s. 3. This section does not prevent the authority from obtaining the requisite power of purchasing land for the purpose. But it is advisable that the decision of the Local Government Board should, when possible, be obtained in the first place as to the propriety of the proposal.

(b) It is presumed that these words are to be construed so as to apply to powers acquired before the Act was passed (see section 326), but the point is far from clear.

(c) See the Waterworks Clauses Act, 1863, in the Appendix, for the provisions as to the protection of reservoirs. See also section 68, *post*.

(d) See as to this notice, sections 266, 267. If this notice be not given proceedings may be stayed by injunction, and the expenditure would be unlawful. If the land had not been already obtained, probably it could not be legally acquired.

(e) Generally the newspaper circulating in the district of the local board will suffice, but if the reservoir is to be out of the district, it may be necessary to advertise in a different newspaper.

(f) Section 267 provides for the service of notices, but appears to apply rather to notices *by* the local authority than to notices *to* them. The person affected must, as it seems, be so affected in his land or some interest therein.

(g) Although there be no notice of objection, if the local authority require a loan, they must obtain the sanction of the Local Government Board to the work. This sanction will not be given without due inquiry. See section 233, *post*, and the notes thereon.

(h) This application may be made in writing, signed by the clerk of the authority on folio foolscap paper.

(i) As to enquiries by the Local Government Board, see section 293, *post*.

(k) It does not appear that this order can deal with the interests of persons affected by the works, but their interests may be such as to disallow the proposal.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district^(a) as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force.^(b) Power of carrying mains.

(a) These words are new, and enable the water to be brought from any distance to the district.

(b) See section 16, *ante*, p. 38; as to sewers within the district, and section 32, *ante*, p. 61, and *Jones v. Conway and Colwyn Bay Joint Water Supply Board*, *ante*, p. 40, as to sewers without the district. See as to the powers conferred by this section *East Molesey Local Board v. Lambeth Waterworks Company* [1892], 3 Ch. 289; 62 L. J. Ch. 82; 67 L. T. N. S. 493; 2 R. 88, and *Hill v. Wallasey Local Board* cited in the notes to section 57, *post*, p. 84.

Section 55.

As to supply
of water.

55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water ;(a) and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district or part of the district supplied.(b)

(a) This is compulsory upon the authority, and as to their default herein, see section 299, *post*. Compare also the provisions of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 35. As to the purposes for which the authority are bound to supply water, see the Waterworks Clauses Act, 1847, section 53, and the Waterworks Clauses Act, 1863, sections 12, 13. These sections are set out in the Appendix.

The defendants were empowered by a special Act (32 & 33 Vict. c. cx.) incorporating the Waterworks Clauses Act, 1847, with the exception of certain provisions, to supply water for domestic use within the limits and from the sources described by the Act. By section 66 of the special Act the defendants were entitled to prescribe the material to be used for service pipes by persons supplied with water, and by bye-laws the defendants prescribed that the material might either be lead or cast-iron. Service pipes of lead were, upon the application of the landlord of the plaintiff's house and of the plaintiff, laid down by the defendants from their mains to the house at the expense of the landlord and of the plaintiff. The service pipes when laid belonged to the consumer of the water supplied through them. By the Waterworks Clauses Act, 1847, section 35, "the undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act who shall be entitled to demand a supply and shall be willing to pay water-rate for the same." Water, which was pure and wholesome in the mains of the defendants, was supplied by them to the plaintiff, but in its passage from the mains through the service pipes it was contaminated by the lead, and he, using the water, suffered from lead poisoning. In an action against the defendants for injuries sustained from impure and unwholesome water, held, that the plaintiff had no cause of action. *Milnes v. Mayor of Huddersfield*, 11 App. Cas. 511; 56 L. J. Q. B. 1; 55 L. T. (N.S.) 617; 34 W. R. 761; 50 J. P. 676.

As to the mode of enforcing the duty to supply pure water, see *Attorney-General v. North Shields Waterworks Company*, "Times," 12th May, 1892.

(b) It is, however, at the discretion of the local authority whether they will act upon this provision, and they will be guided by the state of the district, and the facilities for obtaining water, so as to be able to raise it to the requisite height. It is to be observed that sections 35 and 42 of the Waterworks Clauses Act, 1847, as to high pressure are not incorporated into this Act. The local authority are not therefore under any obligation to supply water at high pressure by reason of these sections. See *Purnell v. Wolverhampton New Waterworks Company*, 10 C. B. (N.S.) 576; 4 L. T. (N.S.) 513. In *Finchley Local Board v. Barnet District Gas and Water Company*, "Times," 9th February, 1893, a question arose as to the liability of a water company to keep water constantly laid on. The special Acts of the company incorporated the provisions of the Waterworks Clauses Acts, 1847 and 1863, so far as applicable, and provided that the water need not be constantly laid on under pressure, except that on the application of a local authority the company might be required to provide a constant supply within so much of their district as could be supplied from their reservoir, but not higher than 300 feet above the ordnance datum level. It was contended on appeal from justices that this provision did not relieve the company from the liability imposed by sections 35, 37, and 42 of the Act of 1847 of supplying water at high pressure for domestic purposes and for use at fires. But it was held by LAWRENCE and COLLINS, JJ., that the case of *Purnell v. Wolverhampton New Waterworks Company*, *ubi supra*, was a direct authority to show that words such as those used in the special Act exempted a company from keeping a supply under pressure for fire purposes, and that the principle underlying that decision showed that the exemption extended also to the keeping of a constant supply; and that under the local Acts if the plaintiff board desired to have water for fire always laid on they could secure it on entering into the necessary agreements and making the prescribed payments.

56. Where a local authority supply water to any premises they may (a) charge in respect of such supply a water rate to be assessed on the net annual value (b) of the premises ascertained in the manner by this Act prescribed with respect to general district rates; (c) moreover they may enter into agreements (d) for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates. (e)

Section 56.

Power to charge water rates and rents.

(a) The Public Health (Water) Act, 1878, section 10, provides that "when a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any of the persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place." As to the power of an authority to charge water rates or water rents in respect of water supplied from standpipes, see sections 9 and 11 of the same Act, which is set out at length, *post*.

(b) See the definition of *net annual value* in section 4, *ante*, p. 11. This definition precludes the difficulties of construction which arose as to the meaning of *annual value* in *Warrington Waterworks Company v. Longshaw*, 9 Q. B. D. 145; 51 L. J. Q. B. 498; 46 L. T. (N.S.) 815; 31 W. R. 11; 46 J. P. 773; *New River Company v. Mather*, L. R. 10 C. P. 442; 44 L. J. M. C. 105; 32 L. T. (N.S.) 658; 39 J. P. 614; and *Dobbs v. Grand Junction Waterworks Company*, 9 App. Cas. 49; 53 L. J. Q. B. 50; 49 L. T. (N.S.) 541; 32 W. R. 433; 48 J. P. 5. And see the cases cited in the notes to 10 & 11 Vict. c. 17, s. 68, *post*. For the calculation of the annual value where an owner is assessed, see *Smith v. Birmingham (Corporation of)*, 11 Q. B. D. 195; 52 L. J. M. C. 81; 49 L. T. (N.S.) 25; 31 W. R. 788; 47 J. P. 645.

(c) As to the manner of ascertaining the net annual value for purposes of general district rates, see section 211, *post*.

In *Mayor, &c., of Worcester v. Droitwich Assessment Committee*, 2 Ex. D. 47, 60; 45 L. J. M. C. 81; 36 L. T. (N.S.) 186; 25 W. R. 336; 41 J. P. 355, MELLISH, L.J., said:—"We think that the corporation in making a water rate are bound to make an estimate of the sum they actually require for the maintenance of their waterworks, and cannot legally levy a larger sum by a water rate than the sum they so require." But notwithstanding this *dictum*, it is submitted that a local authority may out of the waterworks pay all or part of the expense of providing as well as maintaining the water rates and of repaying instalments of principal and interest of money borrowed for the purpose of providing a water supply. This view is confirmed by the language of section 229, *post*, defining special expenses.

(d) These should be in writing, but as they will rarely, if ever, fall within section 174. As to contracts for more than 50*l.*, they need not, save in such an event, be under seal. See per Lord BRAMWELL in *Young v. Leamington (Mayor, &c., of)*, 8 App. Cas. 517, 522; 52 L. J. Q. B. 713; 49 L. T. (N.S.) 1; 31 W. R. 925; 47 J. P. 660.

See section 58, *post*, p. 85, as to agreements to supply water by measure.

(e) See next section. Observe the distinction between water rents which are payable under a special agreement, and water rates which are chargeable on the net annual value of the premises without any such agreement. Another example of a water rent will be found in section 58, *post*, p. 85.

57. For the purpose of enabling any local authority to supply water, there shall be incorporated with this Act the Waterworks Clauses Act, 1863, (a) and the following provisions of the Waterworks Clauses Act, 1847; (b) (namely),

Incorporation of certain provisions of Waterworks Clauses Acts.

"With respect" (where the local authority have not the control of the

Section 57.

streets)(c) "to the breaking up of streets for the purpose of laying pipes;"(d) and

"With respect to the communication pipes to be laid by the undertakers;" and

"With respect to the communication pipes to be laid by the inhabitants;" and

"With respect to waste or misuse of the water supplied by the undertakers;" and

"With respect to the provision for guarding against fouling the water of the undertakers;" and

"With respect to the payment and recovery of the water rates."(e)

Provided—

That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively, shall apply only in districts, or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction;(f) and

That section forty-four of the Waterworks Clauses Act, 1847,(g) shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner, or reputed owner, of any such house, or of the agent of such owner," were omitted therefrom;

And any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.(h)

(a) That is 26 & 27 Vict. c. 93. See the statutes in the Appendix.

(b) That is 10 & 11 Vict. c. 17, ss. 28—34, ss. 44—53, ss. 54—60, ss. 61—67, and ss. 68—74. These clauses are printed in the Appendix. With respect to the incorporation of parts of Acts by reference to the heading, see *Ferrar v. Commissioners of Sewers of London*, L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. (N.S.) 295; 17 W. R. 709; *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 30 J. P. 37; *Dungey v. Mayor, &c., of London*, 38 L. J. C. P. 298; 20 L. T. (N.S.) 921; 17 W. R. 1106; *Reg. v. St. Luke's, Chelsea*, L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. (N.S.) 914; 20 W. R. 209; 36 J. P. 245.

(c) These words are descriptive of a local authority who have not the control generally of the streets in their district and do not apply to an urban sanitary authority having such control. The plaintiff was the owner of a private road in the defendant urban sanitary authority's district who had the control of the streets generally in their district, and also the power of supplying the inhabitants with water, and they commenced, without the plaintiff's consent, to break up his private road for the purpose of laying down water mains:—Held, as above, by the Court of Appeal (A. L. SMITH, L.J., dissenting), and that the defendants had power under sections 16 and 54 to lay down pipes in the plaintiff's private road without his consent, making him proper compensation under section 308. *Hill v. Wallasey Local Board* [1894], 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. (N.S.) 641; 42 W. R. 81; 7 R. 51, reversing *KEKEWICH, J.* [1892], 3 Ch. 117; 62 L. J. Ch. 132; 67 L. T. (N.S.) 49; 56 J. P. 469.

(d) A waterworks company having laid down a pipe under the surface of a highway, a leak occurred and the water oozed out; a builder, engaged by the owner of the soil

of the highway, in making a tunnel under the road, suffered damage and loss by reason of the leakage. It was held that he had no legal right of action against the company. *Cattle v. Stockton Waterworks Company*, L. R. 10 Q. B. 453; 44 L. J. Q. B. 139; 33 L. T. (N.S.) 475; 39 J. P. 791. And see the cases cited in the notes to section 19, *ante*, p. 50.

(e) Provision for the recovery of water rates is found in 26 & 27 Vict. c. 93, s. 21, in addition to those in 10 & 11 Vict. c. 17.

(f) See the definition in section 4, *ante*, p. 22.

(g) See in the Appendix, *post*.

(h) Query whether this will overrule any covenants by lessees to bear charges leviable upon lessors, as to which see note on section 226, *post*. The language is only permissive, and may, possibly, be provided for by express covenant.

Note to
Section 57.

58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent^(a) or otherwise for every meter provided by them; Power to
supply water
by measure.

They shall at all times, at their own expense, keep all meters and other instruments for measuring water, let by them for hire to any person, in proper order for correctly registering the supply of water, and in default of their so doing, such person shall not be liable to pay rent for the same during such time as such default continues.

The local authority shall, for the purposes aforesaid, have access to and be at liberty, at all reasonable times, to remove, test, inspect, and replace any such meter or other instrument.

(a) This agreement must provide for the payments for the supply of the water, for the use of the meter, and for the penalties in respect of the breaches mutually. It does not appear that there is any summary means of recovering the rent for the meter, but the amount due from time to time will be dealt with as rent due between landlord and tenant, and must be recovered by the ordinary civil process, though apparently there cannot be any distress.

This provision for the supply of water by measure is new, so far as the previous sanitary Acts went, though it is found in many local water Acts.

The S. waterworks company was authorised to receive payment by measure, and not by a rate, for water supplied to fixed baths in private houses. There was no express provision in their special Acts or in the Waterworks Clauses Acts as to how the water for such a purpose was to be measured, or whether the company or the consumer was to bear the cost of providing a meter for measuring the water; but by the Waterworks Clauses Act, 1863, section 14, when the company supply water by measure they may let to a customer a meter for such remuneration as they may agree upon:—Held, that a consumer taking water from the company for a fixed bath in his private house, was bound at his own expense to measure the water so used by some automatic and self-registering meter or other instrument, or in some other equally accurate way, and to record the amount from time to time taken. *Sheffield Waterworks Company v. Bingham*, 25 Ch. D. 443; 48 L. T. (N.S.) 604; 52 L. J. Ch. 624. The learned judge who decided this case (PEARSON, J.) expressly distinguished it from the decisions of the Queen's Bench Division in the *Sheffield Waterworks Company v. Carter*, and *The Same v. Brooks*, 8 Q. B. D. 632; 51 L. J. M. C. 97; 30 W. R. 889; 46 J. P. 548. In the first of these cases the facts were as follows:—The special Act provided for the supply of water to the inhabitants of the district for "family use" at certain rates calculated on the rental of the house supplied. The Act contained further provisions for the supply of water to schools, manufactories, &c., and for purposes other than family consumption, and for baths, &c., and for the purposes of any trade or business whatsoever, at certain rates per thousand gallons. The supply of water having been held obligatory upon the company unless prevented by causes beyond their control, it was held that, there being no provision in the special Act throwing upon the consumer the obligation of providing a meter to measure the water supplied for the purposes of a bath, no such obligation could be implied from the 14th section of the Waterworks Clauses Act, 1863, incorporated with the special Act, the effect of which is above stated. In the second case the occupier of a house within the district had a bath connected by means of a pipe

**Note to
Section 58.**

with the house cistern, to which water was conveyed by the company's main for family use. The company required him to put up a meter for the purpose of measuring the water used for the bath, but he refused to do so. He had paid to the company in advance the proper amount in respect of the water supplied for family use for the quarter ending 29th September, but had not paid or tendered any sum in respect of the water supply to the bath for the same period. The company, in consequence of his refusal to put up a meter or disconnect the bath, cut off the communication pipe from their main to his house upon the 20th September. On the 29th September, having cut off the pipe connecting the cistern with the bath, but not the waste or outlet pipe from the bath, he gave notice to the company of what he had done, and paid to the company in advance the proper amount for the supply of water for family use during the ensuing quarter, but did not restore the communication pipe between the company's mains and his cistern. The company refused to restore the supply, on the ground that he had not cut off the waste pipe from the bath, which he refused to do. The supply of water was not renewed till the 4th November, when the company restored the communication pipe under protest. It was held that the company were not entitled to insist on the consumers providing a meter, that they were not liable to a penalty under the Waterworks Clauses Act, 1847, section 43, for not supplying water during the period from the 20th to the 29th September, inasmuch as no tender or payment in respect of the water supply to the bath for such period had been made; but that they were liable to a penalty in respect of the period subsequent to the 29th September, and that they had no right to refuse the supply of water after that date; and that they were not justified in cutting off the supply, and were, therefore, not entitled to require the consumer to renew the communication. These cases show that the agreement to supply water by measure under the above section must contain express stipulations as to the providing and the rent of the meter. In the absence of such stipulations, it is submitted that the consumer cannot be compelled to provide or to pay rent for a meter, though he may be bound to provide some automatic and self-registering instrument to keep a record of the amount of water used. And see *Weaver v. Cardiff (Corporation of)*, 48 L. T. (N.S.) 906.

When water is supplied by measure it is the subject of larceny. *Ferens v. O'Brien*, 11 Q. B. D. 21; 52 L. J. M. C. 70; 31 W. R. 643; 47 J. P. 472.

Register of
meter to be
evidence.

59. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be *prima facie* evidence of the quantity of water consumed;

And if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined on the application of either party, by a court of summary jurisdiction.(a)

And such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.(b)

(a) See the definition in section 4, *ante*, p 22.

(b) These costs will be a civil debt within the meaning of the Summary Jurisdiction Act, 1879, sections 6, 35, and 47, and payment of them may be enforced accordingly. See section 251, *post*, and the notes thereon.

Penalty for
injuring
meters.

60. If any person wilfully or by culpable negligence injures, or suffers to be injured, any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings,(a) and the local authority may, in addition thereto, recover the amount of any damage sustained.(b)

The existence of artificial means, under the control of the consumer,

for causing any such alteration, prevention, abstraction, or use, shall be **Section 60.**
evidence(c) that the consumer has fraudulently effected the same.

(a) See, as to the recovery of penalties, section 251, *post*. As to the other right or remedy of the local authority, that will be under the agreement, as to which see section 58 and note (a) thereto. There may be a criminal remedy for larceny of the water under certain circumstances. See *Ferens v. O'Brien*, *supra*.

(b) The amount of the damage is not a penalty, and payment of it will apparently have to be enforced as a civil debt under the Summary Jurisdiction Act, 1879, if it is recovered at the same time and in the same proceeding as the section appears to intend.

(c) This is only *prima facie*, not conclusive evidence or proof.

61. Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, (a) supply water to the local authority of any adjoining district, on such terms as may be agreed on between such authorities, or as, in case of dispute, (b) may be settled by arbitration in manner provided by this Act. Power to supply water to authority of adjoining district.

(a) In *Halifax Corporation v. Local Board of Soothill Upper*, 31 L. T. (N.S.) 6, a corporation had obtained parliamentary power to collect all the water from the gathering grounds of a district, but were bound to supply to the township of T. not less than 25,000 gallons, nor more than 75,000 gallons of water per day at a fixed price, the amount to be supplied between the maximum and the minimum to be at the option of the purchaser. It was held on demurrer that the township of T. might enforce the supply of more than 25,000 gallons per day for the purpose of selling part of it at a profit to a neighbouring township. This case was decided before the present Act came into operation, and the foregoing section, which is altogether new, recognizes the power of one local authority to supply another with water. The Local Government Board will have to take care that the authority can properly spare the water and prevent improvident arrangements in this respect. The application to the board must be made in writing under the hand of the clerk of the board, and on folio foolscap paper. And the agreement between the two authorities should be under seal.

In the case of *Halifax (Corporation of) v. Morley (Corporation of)*, 10 T. L. R. 454, by the defendants' special Act, it was enacted that the defendant corporation should not either directly or indirectly supply any water, nor enter into any contract whereby water might be either directly or indirectly supplied or used, within the water supply limits of the plaintiff corporation, nor within any place within which water was at the time of the passing of the special Act either directly or indirectly supplied by the plaintiff corporation. The defendant corporation supplied water to the works of a railway company within the district of a rural sanitary authority who supplied within their own district water supplied to them by a local board, and that local board received its supply from the plaintiff corporation and was so receiving it at the time of the passing of the defendants' special Act. And it was held that the action of the defendant corporation in supplying the railway company was contrary to their special Act.

(b) As this is a voluntary arrangement, it seems somewhat difficult to understand how there can be any dispute, but as to the provision for arbitration, see section 179, *post*.

62. Where, on the report of the surveyor(a) of a local(b) authority, it appears to such authority that any house within their district is without a proper supply of water, (c) and that such a supply of water can be furnished thereto at a cost not (d) exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force, at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, (e) determine under all the circumstances of the case Local authority may require houses to be supplied with water in certain cases.

Section 62. to be reasonable, *(f)* the local authority shall give notice in writing to the owner, *(g)* requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district; *(h)* and water rates *(i)* may be made and levied on the premises by the authority or company which furnishes the supply, and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner *(k)* from the owner of the premises, or may, by order of the local authority, be declared to be private improvement expenses. *(l)*

(a) See the definition as to the surveyor of a rural authority in section 4, *ante*, p. 6.

(b) This section applies both to urban and rural districts. It is not repealed by the Public Health (Water) Act, 1878, *post*, although that Act gives increased powers to compel the providing of a water supply to houses in rural districts. *Colne Valley Waterworks Company v. Treharne*, 50 L. T. (N.S.) 617; 48 J. P. 279. See also section 8 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*.

(c) These words have been read in the former Public Health Acts as signifying a supply of proper water, so that a well containing a supply of water, but polluted, is not a proper supply of water. This is probably a correct interpretation of these words, though, of course, they primarily apply to the case of a mere deficiency of water. See the provision as to lodging-houses in section 81, *post*, p. 103.

(d) The cost referred to in this section is the cost of the supply of water, and is quite distinct from the expense of bringing the supply to the premises. It is further to be observed that this section appears only to apply when there is a water supply which can be obtained from the mains of a water company or of the local board. This construction of the section results from the use of the words *furnished thereto*, which would be inapplicable to the case of a well, &c., provided at a distance from the house; and at the latter end of the section it is provided that water rates may be made or levied on the premises by the authority or company which supplies the water. See the evidence of the Secretary of the Local Government Board given before a select committee of the House of Commons in 1878, at pp. 11, 12, of the report. And see per STEPHEN, J., in *Southend Waterworks Company v. Howard*, *infra*, note *(i)*.

(e) See section 61, note *(a)*, *ante*, p. 87, as to the mode of making this application.

(f) This alternative is new. Although inconvenient, it appears to be necessary that the Local Government Board should make an order separately for every case, though probably several may be embraced in the same document. The Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), s. 8, provides that where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875, to determine what is a *reasonable cost* within the meaning of that section, the board may for that purpose fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order, shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges.

(g) See the definition in section 4, *ante*, p. 6. Note that the notice must proceed from the local authority, not from the surveyor or other officer. See *St. Leonard's, Shoreditch (Vestry) v. Holmes*, *ante*, p. 55.

(h) This is new. The contract must be framed generally to meet various cases. It is not likely that a contract can be made for a single case. See section 173, *post*, as to the making of contracts.

(i) As to how water rates may be made and levied, see 10 & 11 Vict. c. 17,

ss. 68—74, and 26 & 27 Vict. c. 93, s. 21, incorporated herewith by section 57, *ante*, p. 83, and set out in the Appendix.

A local authority caused a supply of water to be brought in main water pipes along the street in which a house was situate, and gave notice to the owner of the house under this section, to obtain a proper supply, and do all such works as might be necessary for that purpose. That notice was not complied with, and the local authority did not exercise the power given to them by this section of executing the works necessary to connect the house with the main. In an action by the water company for water rates, it was held that the defendant was liable, and that it was not a condition precedent to such liability that the works necessary to bring the water into the house should have been executed. *Southend Waterworks Company v. Howard*, 13 Q. B. D. 215; 53 L. J. Q. B. 355; 32 W. R. 923; 48 J. P. 469.

(k) See section 251, *post*. As to the definition of owner, see the definition in section 4, *ante*, p. 6. It will be seen that though the occupier may be required to pay for the supply of the water, the owner is to pay the cost of the works. As to the cases in which the owner may be compelled to pay the water rates, see 10 & 11 Vict. c. 17, s. 72, in the Appendix. No preliminary determination of the local authority as to the necessity for the supply or the works need be proved in any proceeding to recover the expenses. *Caballero v. Lewis*, 38 J. P. 614.

(l) See, as to these expenses, section 213, *post*. An appeal against the order lies to the Local Government Board: see section 268, *post*.

63. Any water company may contract to supply water, or may lease their waterworks to any local authority; and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862,(a) of a special resolution of the members passed in manner provided by that Act,(b) and in the case of any other company of a resolution passed by three-fourths(c) in number and value of the members present, either personally or by proxy, at a meeting specially convened, with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights, powers, and privileges, and all or any of the waterworks, premises, and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

(a) 25 & 26 Vict. c. 89. A similar provision will be found in sections 162 and 168, *post*. It will be remembered that section 51, *ante*, p. 76, enables the local authority to purchase. This section enables them to sell.

As to terms, see *Stockton and Middlesbro' Water Board v. Kirkleatham Local Board*, cited in the notes to section 51, *ante*, pp. 77, 78. And see the observations on that case in *London County Council v. London Street Tramways Company* [1894], 2 Q. B. 189.

(b) See 25 & 26 Vict. c. 89, s. 51.

(c) The Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 63, required a resolution of three-fifths. The directors may contract or lease of themselves; but can only sell with consent of the shareholders.

64. All existing public cisterns, pumps, wells,(a) reservoirs,(b) conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants of the district of any local authority, shall(c) vest in and be under the control of such authority, and such authority may(d) cause the same to be maintained and plentifully supplied(e) with pure and wholesome water,(f) or may substitute,(g) maintain, and plentifully supply with pure and wholesome water,(f) other such works equally convenient; they may also (subject to the provisions of this Act)(h) construct any other such works for supplying water for the gratuitous

Powers of
water
company
for supply-
ing water
to local
authority.

Vesting of
public cis-
terns, &c.,
in local
authority.

Section 64. use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.(i)

(a) A well situated on private ground, the water of which had been used for domestic purposes gratuitously by the inhabitants in the vicinity for the prescriptive period, was held to be a public well within the meaning of the corresponding provisions of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 109), s. 89, sub-sect. 4, and it was also held that the local authority might enter upon the land and do all acts to the well for continuing and maintaining it, which the inhabitants might have done before, and that although there might be a company with a vested right to supply the inhabitants with water. *Smith v. Archibald*, 5 App. Cas. 489. The facts in that case were shortly as follows:—Situated in one corner of a field in the parish of D. was a well. From the well to the entrance of the field there was a footpath, and from that entrance to the public road going through the village of D. there was a cart road. The inhabitants of D. had for the prescriptive period used the water of the well for domestic purposes, and had, among other acts done to the well, cradled it with stones at their own expense. The local authority, acting under the section already mentioned, caused the well to be covered in with an iron plate, and placed therein a hand pump with the avowed object of keeping the well free from pollution. The proprietor of the field, alleging the well to be his private property, instituted proceedings to compel the authority to remove the cover and pump. But it was held by the House of Lords, affirming the decision of the court of session, that the well was a public well within the meaning of the statute, and that the local authority, as representing the inhabitants, had not done anything in excess of their powers. In *Holmfirth Local Board v. Shore*, Q. B. D. (DAY and WRIGHT, JJ.), 26th April, 1895, a stone trough receiving water from a spring at some distance from it, was held to be either a well or a reservoir. And it was pointed out by WRIGHT, J., in that case, that the Scotch Act does not vest the wells, &c., in the local authority, so that the powers of the local authority are wider under the English Act.

(b) In the *Leadgate Local Board v. Bland*, 45 J. P. 526, which was a case tried at Durham Assizes, KAY, J., held that a natural pond was a reservoir within the section, having been used by the public for a number of years for the purpose of watering horses.

(c) It will be remembered that by the previous Public Health Acts, such cisterns, &c., have been vested in the respective local authorities, so that this section only continues the vesting already established. As to the meaning of the phrase *vest in*, see section 13, note (f), *ante*, p. 34, and the notes to section 149, *post*. The effect of it is to enable the local authority to bring an action in their own name and not in the name only of the Attorney-General for damages for any interference with the well, although such interference is not proved to be injurious to the public rights. But for interfering with public access or for an injunction, the action must be in the name of the Attorney-General. *Holmfirth Local Board v. Shore*, Q. B. D. (DAY and WRIGHT, JJ.), 26th April, 1895.

(d) Query, how far the word casts a duty on the local authority. They may maintain public wells, &c., although there is a company which supplies the district with water. "What the Act says is, notwithstanding that there may be a company with a vested right to supply the inhabitants, the local authority may, where there is a public well, and where there is a public right to be gratuitously supplied (from it) continue and maintain that well." Per Lord BLACKBURN, in *Smith v. Archibald*, *supra*.

(e) In *Edwards v. Joliffe*, W. N. (1877), p. 120, an injunction was granted at the suit of the plaintiff, a landowner, through whose estate a lane passed, to restrain the defendants, the servants of the surveyor of highways, from digging holes in the roadway of the lane under these circumstances. On a piece of land not actually part of the lane, but entirely open to it, were five public wells which suddenly failed. The highway board, with the sanction of the rural sanitary authority, in whom the wells were vested under the above section, ordered the defendant to dig the holes either to recover the water or to discover the cause of its having ceased to flow. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water, and the defendant said he had no doubt the supply of water to the wells had been tapped by the plaintiff's operations:—Held, that the above section did not authorise the local authority to enter another man's land and help themselves to water. There was no suggestion that the plaintiff had done anything more than he was clearly entitled to do, or that the defendants were not entering his land.

Note to
Section 64.

(f) These words are new and must be regarded carefully. If the well, &c., does not contain pure and wholesome water, and the local authority does not care to maintain it, they may close it under section 70, *post*.

(g) This would appear to refer to a substitution of the new works in the same place as the old. If so this right would appear to be independent of the restriction imposed upon the local authority by section 52, *ante*, p. 79, as to the construction of waterworks.

(h) This appears to refer to section 52. If there is a water company supplying the district, the local authority would seem to require their consent to the gratuitous provision of water to the inhabitants. Otherwise the persons using the gratuitous supply might be chargeable with water rates or might be convicted under section 49 of the Waterworks Clauses Act, 1847, *post*. See *Hildreth v. Adamson*, *infra*.

(i) A local board of health Act empowered the board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant of the town having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of cattle in the market, and for horses, if yoked, when passing to and fro. The respondent, who kept horses, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information laid against him under the Waterworks Clauses Act, 1847, section 59, *post*, the magistrates being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the gratuitous use of the public under the corresponding section of the Public Health Act, 1848, declined to convict. On appeal it was held that they were wrong, for notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will. *Hildreth v. Adamson*, 8 C. B. (N.S.) 587; 30 L. J. M. C. 204; 2 L. T. (N.S.) 359; 25 J. P. 645. The effect of this case is that the board may, if they think fit, limit the purposes for which the gratuitous supply is provided. The court refrained from expressing any opinion on the point, whether a fountain for gratuitous supply might by virtue of this section be erected on a public highway. And it may be observed that while the 53 & 54 Vict. c. 59, s. 42, enables an urban authority to erect a statue or monument in a street, it does not mention a fountain.

As to the erection of stand-pipes by a rural sanitary authority or by an urban authority under an order of the Local Government Board, and as to the rating of persons using the water from such stand-pipes, see the Public Health (Water) Act, 1878, sections 9—11, *post*.

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or washhouses(a) or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied:(b)

Water for
public baths
or trading or
manufac-
turing
purposes.

Moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or washhouses established otherwise than for private profit, or supported out of any poor or borough rates.(c)

(a) See the Baths and Washhouses Acts, as defined by section 4, *ante*, p. 21.

(b) It is optional with the local authority whether they will supply water for these purposes or not. They are obliged to supply water for domestic purposes if they undertake the supply of water to the district. See section 55, *ante*, p. 82, and see the Waterworks Clauses Act, 1847, section 53, *post*.

The agreement referred to should be duly set forth in writing, and executed under the seal of the parties.

(c) It is not quite clear what is referred to by these latter words, as public baths and washhouses are vested in the local authorities, and are supported out of the general funds.

Section 66.

Duty of
urban
authority to
provide fire-
plugs.

66. Every urban authority shall^(a) cause fire-plugs and all necessary works, machinery, and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person.

And they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.^(b)

^(a) Note that these words are imperative, and require the urban authority to make this provision. The clause is introduced from the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 124. Nothing, however, in the present section or in the Waterworks Clauses Act, 1847, ss. 38—41, in the Appendix, *post*, imposes on an urban authority any obligation to bear the expense of maintaining in repair the fire-plugs in their district, unless such fire-plugs have been fixed by them or by some water company or other person at their request. *Grand Junction Waterworks Company v. Brentford Local Board* [1894], 2 Q. B. 735; 63 L. J. Q. B. 717; 71 L. T. (N.S.) 240; 59 J. P. 51; 10 T. L. R. 396, 572; 9 R. 788. It must be observed that section 171, *post*, incorporates the provisions of the Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 32, which enables the urban authority to provide *fire engines*.

The following cases have been decided with respect to the liability of water companies to provide and maintain fire-plugs and apparatus for extinguishing fires:—

A water company, having observed the directions of the Act of Parliament in laying down their pipes, are not responsible for an escape of water from them not caused by their own negligence. The fact that their precautions proved insufficient against the effect of a winter of extreme coldness, such as could not have been foreseen, is not sufficient to render them liable for negligence. Fire-plugs properly constructed having been inserted as safety valves in these pipes in pursuance of the Act, *semble*, per BRAMWELL, B., that the company are not liable for an accident caused by the accumulation of ice in the streets over the plugs. *Blyth v. Birmingham Waterworks Company*, 11 Ex. 781; 2 Jur. (N.S.) 333; 25 L. J. Ex. 212; 26 L. T. (O.S.) 261; 20 J. P. 247.

By a local Act a waterworks company was bound at the request of the Town Improvement Commissioners to fix fire-plugs into their mains, and to repair and keep them in proper order at the cost of the Commissioners, in whom the property in the plugs was vested by virtue of their improvement Act. In consequence of the cap of one of the plugs provided under the Act being broken, a horse placed his foot in the plug-hole and was lamed:—Held, that the waterworks company and not the Commissioners were liable for the injury. *Bayley v. Wolverhampton Waterworks Company*, 6 H. & N. 241; 30 L. J. Ex. 57; 25 J. P. 199.

It will be found stated in the notes to section 144, *post*, that though a local authority are not liable for accidents caused by the mere non-repair of highways, they may be responsible not as surveyors of highways, but in another capacity as the owners of drains, water pipes, fire-plugs, &c., in the highway. Thus in *Blackmore v. Mile End Old Town (Vestry of)*, 9 Q. B. D. 451; 51 L. J. Q. B. 496; 46 L. T. (N.S.) 867; 30 W. R. 740; 47 J. P. 52, a local authority were held liable for an accident caused by an iron flap placed in the highway over a water meter, the flap having worn smooth and become slippery and dangerous. But where the same body are both the highway authority and the water or sewer authority they cannot be held responsible for accidents caused by the wearing away of the road allowing the edge of a manhole cover to a sewer or a sewer grating or a water valve cover to project dangerously above the surface of the road, the cover or grating not being in itself out of repair or improperly constructed. *Thompson v. Mayor, &c., of Brighton*; *Oliver v. Horsham Local Board* [1894], 1 Q. B. 332; 63 L. J. Q. B. 181; 70 L. T. (N.S.) 206; 42 W. R. 161; 58 J. P. 297; 9 R. 111; 10 T. L. R. 98, overruling *Kent v. Worthing Local Board*, 10 Q. B. D. 118; 52 L. J. Q. B. 77; 48 L. T. (N.S.) 362; 31 W. R. 583; 47 J. P. 23. It has been held that a water company which is authorised by statute (10 & 11 Vict. c. 17, s. 38) to place fire-plugs in a public highway, and is required to keep the plugs in repair, but has no power to repair the highway, is not bound to vary the level of such plugs from time to time if and as the surface of the road wears away. If the fire-plug is properly placed in the first instance, and is kept in repair, the company will not be liable for a personal injury to one of the public by

reason of the projection of the plug above the level of the highway. *Moore v. Lambeth Waterworks Company*, 17 Q. B. D. 462 ; 55 L. J. Q. B. 304 ; 55 L. T. (N.S.) 309 ; 34 W. R. 559 ; 50 J. P. 756.

The plaintiff, walking down a street in Walworth, leaning on his stick, put his stick into a hole, in which was a stop-cock, fell, and broke his leg. The motion for a new trial was brought on the ground that there was no evidence to go to the jury that the defendant company were responsible for having put or kept the unsafe box in which the stop-cock was fixed. It had been agreed between the parties that if there was proved to be evidence of negligence against the defendants, a judgment should be entered for the plaintiff for 40*l*. The defect in the fitting of the stop-cock was that it was contained in an old-fashioned "box," with a deep open hole to admit the key for turning the water off and on, instead of a closed box of the pattern now used. There was evidence that an officer of the company had been seen superintending the operation of putting down the stop-cock. The box was impressed with the name of the company. It had been supplied by the company, and the company had a regulation made by them under statutory authority, requiring such work to be done for occupiers and owners by themselves :—Held, that there was evidence of negligence on the part of the defendants for which they were liable. *Strutt v. Southwark and Vauxhall Water Company*, 5 T. L. R. 638 ; affirming the decision of the High Court, 53 J. P. 424 ; 5 T. L. R. 451 ; and see *Stockings v. Lambeth Waterworks Company*, 7 T. L. R. 460. See also *Chapman v. Fylde Waterworks Company*, cited in the notes to section 28 of the Towns Police Clauses Act, 1847, *post*.

Although a water company is not liable for the unforeseen results of an extraordinary frost, yet they are bound to take reasonable care to provide against the consequences of ordinary frosts ; and where it appeared it was known that the effect of frost would be to cause the plugs in the water pipes to start, and thus to let the water out at the side, and that some precautions might have been taken, if not to prevent this, at all events to prevent the water from escaping through the soil, and no such precautions having been taken, the plugs started in a frost of extraordinary severity, and the water thus escaping, ran through the soil into the plaintiff's cellar :—Held, that there was some evidence of negligence on which a jury might hold the company liable. *Steggles v. New River Company*, 11 W. R. 234 ; affirmed on appeal, 13 W. R. 413.

A private water Act provided that the company should, at the request of an owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company was or should be laid, and who required a supply of water, afford a supply of water. The plaintiff declared upon the section so providing, and stated that he was such an owner and occupier, and that he requested and required a supply of water, but that the company made default in affording to the plaintiff the said supply, by reason whereof he was unable to extinguish a fire which destroyed his premises. The defendants pleaded that the main or service pipe had a certain fire-plug properly fixed in it, and that the said fire-plug was opened for the purpose of extinguishing another fire, which was the cause of the default. They also pleaded that they were prevented from affording the said supply of water from unavoidable cause or accident :—Held, on demurrer, that the former of these two pleas was good, but the latter was bad. *Campbell v. East London Waterworks Company*, 26 L. T. (N.S.) 475 ; 36 J. P. 711.

By the Waterworks Clauses Act, 1847, the undertakers are : (1) to fix and maintain fire-plugs ; (2) to furnish to the town commissioners a sufficient supply of water for certain public purposes ; (3) to keep these pipes to which the fire-plugs are fixed at all times charged with water at a certain pressure, and to allow all persons at all times to use the same for extinguishing fire without compensation ; and (4) to supply to every owner or occupier of any dwelling-house, having paid or tendered the water rate, sufficient water for domestic purposes. Penalties are imposed by the Act for neglect of each of the above duties. The plaintiff brought an action for damages against a waterworks company for not keeping their pipes charged as required by the Act, whereby his premises situate within the limits of the defendants' Act were burnt down :—Held, reversing the decision of the Court of Exchequer, that the statute gave no right of action to the plaintiff. *Atkinson v. Newcastle and Gateshead Waterworks Company*, 2 Ex. D. 441 ; 46 L. J. Q. B. 775 ; 36 L. T. (N.S.) 761 ; 25 W. R. 794 ; 42 J. P. 183. But the decision in this case was held not to apply in an action for injuries sustained by the bursting of a fire-plug in a highway, the penalty being for failing to keep the pipes charged in case of fire. *Hancock v. Southwark and Vauxhall Waterworks Company*, W. N. (1889), 198. On the other hand, it was held to apply so as to afford an answer to an action for failing to supply water to an

**Note to
Section 66.**

occupier. *McColla v. Clacton-on-Sea Gas and Water Company*, 5 T. L. R. 690. An urban sanitary authority requested a water company which supplied their district, and whose provisional order incorporated the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), to fix a fire-plug at a spot in a street where it was essential that a fire-plug should be placed, but where the existing pipe of the company was of insufficient capacity to carry a proper fire-plug. The company were willing to place a proper fire-plug at the point, provided the urban authority would pay the expense of laying a new length of three-inch main instead of the existing one-inch pipe. An information having been laid against the company, charging them with neglecting to fix the fire-plug, the company were convicted and fined. But it was held on a case stated that the duties of the company as to the supply of water were regulated by section 35 of the 10 & 11 Vict. c. 17, which provides for a constant supply for domestic use, and that the 38th section imposed no duty on the company to provide pipes of such capacity that fire-plugs could be affixed to them suitable for the supply of water for extinguishing fires, and that the conviction must therefore be quashed. *Reg. v. Wells Water Company*, 51 J. P. 135; *Law Times*, June 12th, 1886, p. 120.

(b) This section will be a sufficient justification, though the owner or occupier of the buildings or walls should object to the mark.

Agreements
with univer-
sities.

67. In the Oxford or Cambridge district(a) the local authority may supply water to any hall, college, or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof and the local authority.

(a) This section renders the demand of water rates from the occupiers of individual chambers unnecessary, but the agreement must be duly executed under seal by the local authority and the corporate body of the university, college, or hall. See section 342, *post*, as to Oxford.

PROVISIONS FOR PROTECTION OF WATER.

Penalty for
causing water
to be cor-
rupted by
gas washings.

68. Any person(a) engaged in the manufacture of gas who(b)—

- (1.) Causes or suffers to be brought or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or,
- (2.) Wilfully does any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place, for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and after the expiration of twenty-four hours' notice(c) from the local authority, or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued,(d) or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to, or under the control of, the local authority, by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows, or whose water is fouled by any such act as aforesaid, or, in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the

local authority ;(e) but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.(f) Section 68.

(a) This word, according to the definition in section 4, *ante*, p. 6, includes any body of persons corporate or unincorporate.

(b) A private Act of Parliament which incorporated a gas company, and empowered them to make the necessary works, contained an enactment (section 160), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, &c., or place for water within the limits of the Act, any washing produced in making gas, or do any act to the water contained in any such stream, &c., or place for water, whereby the water therein should be fouled or corrupted, then the company should forfeit for every such offence 200*l*. Section 161 imposed an additional penalty of 20*l*. per day for the continuance of such pollution more than twenty-four hours after notice. Section 165 made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked at the bottom, and the washings produced in the making of gas escaped and percolated underground through the earth and polluted the water in the plaintiff's well. The company then found on inquiry that mines had been worked by strangers to them under part of their land and close up to the tank. The crack in the tank was caused by the subsidence of the soil, owing, in all probability, to the mining operations:—Held, by the Exchequer Chamber, that the company were liable under section 160 to the penalty of 200*l*. for polluting the plaintiff's water by the gas washings. *Hipkins v. Birmingham and Staffordshire Gas Company*, 30 L. J. Ex. 60 ; 7 Jur. (n.s.) 213 ; 6 H. & N. 250 ; 24 J. P. 438.

When noxious matter percolated through the soil from gasworks so as to foul a well, such percolation was held to render a company liable under the similar provisions of 3 & 4 Will. 4, c. 90. A well which, on account of its having become contaminated, had been disused by the owner for several years, and had been covered over, was held not to cease to be a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled with the acceptance by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character and make it no longer a well, nor could any license to pollute it be inferred from such a state of facts. *Quære*, per KEATING, J., whether a man could by deed give an irrevocable license to pollute a well. A prescription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period. *Milington v. Griffiths and Others*, 30 L. T. (n.s.) 65. In the above case it is assumed that a well is a "place for water."

Apart from statutory provision it appears that a pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R. v. Medley and Others*, 6 C. & P. 292.

It is to be observed that the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 21, contains provisions similar to this section. Where, therefore, that Act is incorporated with a local Act, or where there is a local Act in force containing similar provisions, proceedings may be taken either under this or the local Act by virtue of section 340, *post*.

The Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 62, which is incorporated in this Act by section 57, *ante*, and is printed in the Appendix, contains provisions almost identical with this section, which is taken from 18 & 19 Vict. c. 121, ss. 23, 24, and extends the provisions of 11 & 12 Vict. c. 63, s. 80.

(c) As to notices and their service, see sections 266, 267, *post*.

(d) Apparently this means after notice has been given the latter, so that if no notice be given a penalty of 200*l*. is recoverable ; if notice be given, that sum and the additional sum from the time of the notice is recoverable.

(e) The same provisions in the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), ss. 23—25, were held to supersede a clause in a local Act containing similar

Note to Section 68. penalties. *Parry v. Croydon Gas and Coke Company*, 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568; 28 J. P. 86; but see section 340, *post*. See also note (b), *supra*.
 (f) 11 & 12 Vict. c. 63, s. 80, contained provisions for examining the gas pipes which are omitted here, and it is very doubtful whether section 305, *post*, will apply to this case.

Local authority may take proceedings to prevent pollution of streams.

69. Any local authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as they may deem advisable for the purpose of protecting any watercourse^(a) within their jurisdiction from pollutions arising from sewage^(b) either within or without their district.

And the costs of, and incidental to, any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

(a) Note that this is not applicable to all rivers and streams, but only to such streams as constitute watercourses; and it is presumed that they are not such as belong to the local authority, seeing that the ordinary laws regarding property would enable the local authority to take such proceedings in reference to their own property. To constitute a watercourse there must be water flowing in a channel between banks more or less defined. Per Lord TENTERDEN, C.J., in *R. v. Inhabitants of Oxfordshire*, 1 B. & Ad. 301. It may be natural or artificial. See *Bowes v. Wilson*, 42 L. T. (N.S.) 27; 44 J. P. 364; *Smith v. Barnham*, 1 Ex. D. 419; 34 L. T. (N.S.) 774; 40 J. P. 710; *Biscoe v. Drought*, 11 Ir. C. L. R. 250; *Sutcliffe v. Booth*, 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037; 27 J. P. 613.

(b) The pollution from manufacturing processes or from other similar processes, is not provided for by this section. See, however, the Rivers Pollution Prevention Acts, 1876 and 1893, as to pollution by solid matters, sewage and manufacturing and mining pollutions, and the duties cast upon local authorities by that Act, which is set out in the Appendix.

As to the power of a county council to take proceedings to restrain the pollution of a stream, see the Local Government Act, 1888, section 14, *post*.

Power to close polluted wells, &c.

70. On the representation of any person to any local authority that within their district the water in any well, tank or cistern, public or private, or supplied from any public pump, and used, or likely to be used, by man for drinking or domestic purposes, or for manufacturing drinks for the use of man,^(a) is so polluted as to be injurious to health, such authority may apply to a court of summary jurisdiction^(b) for an order to remedy the same.

And thereupon such court shall summon the owner or occupier^(c) of the premises to which the well, tank, or cistern belongs, if it be private, and in the case of a public well, tank, cistern, or pump, any person alleged in the application to be interested in the same,^(d) and may either dismiss the application or may make an order directing the well, tank, cistern, or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.^(e)

The court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section.^(f)

If the person on whom an order under this section is made fails to comply with the same, the court may, on the application of the local

authority authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner,(g) from the person on whom the order is made. Section 70.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses.(h)

(a) These last words are new, and were inserted to include cases when the water is used for the manufacture of aerated or other drinks for human consumption.

(b) See the definition in section 4, *ante*, p. 22.

(c) Apparently the court may select the party, but the local authority should lay before the court their views as to which party should be summoned. As to the word *owner*, see the definition in section 4, *ante*, p. 6.

(d) These words are general and indefinite. It is presumed that the proper person would be a parish officer or some officer of the local authority, as for the most part the well or other place will be vested in the local authority under section 64, *ante*, p. 89. It has sometimes been considered that persons were interested in a well because they were in the habit of taking water from it. But it is submitted that the interest here referred to is one of ownership. At all events, an order could not be made on such persons under this section.

(e) Very wide powers are granted to the court by these words. It may be prudent to allow the person to be affected to show cause against the granting of this authority. See *Gill v. Bright*, 41 L. J. M. C. 22; 25 L. T. (N.S.) 591; 36 J. P. 198; *R. v. Cheshire Lines Committee*, L. R. 8 Q. B. 344; 42 L. J. M. C. 100; 28 L. T. (N.S.) 808; 37 J. P. 373.

(f) It may be here observed that 38 & 39 Vict. c. 63, and the amending Acts in the Appendix, which provide for the analysis of food and drugs, exclude the analysis of water. Hence any analysis of water must be made independently of these Acts. It is to be noticed also that the power of the court to order an analysis is limited to cases in which the local authority are the applicants for the order.

(g) See section 251, *post*. This part of the enactment is new.

(h) See section 229, *post*.

REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES.

Occupation of Cellar Dwellings.

71. It shall not be lawful (a) or occupy, (b) or suffer to be occupied separately as a dwelling any cellar (including, for the purposes of this Act, in that expression, any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act. (c) Prohibition of occupying cellar dwellings.

(a) The infringement of this section is an offence. The penalty is provided by section 73, *post*.

(b) As to what constitutes or amounts to *occupation*, see section 74, *post*.

(c) But for these words the repeal of 11 & 12 Vict. c. 63, s. 67, would operate so as to legalise the letting or occupation of the cellars built since the passing of that Act. Consequently, no cellar built or rebuilt since 1848 can be lawfully occupied, unless it was let or occupied before that year, and not even in such a case unless the requirements of the next section are complied with.

72. It shall not be lawful (a) to let or occupy (b) or suffer to be occupied separately as a dwelling, any cellar whatsoever, (c) unless the following requisitions are complied with (that is to say) :— Existing cellar dwellings only to be let or occupied on certain conditions.

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least

Section 71.

three feet of its height above the surface of the street or the ground adjoining or nearest the same ; and

Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part ; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof ; and

Unless there is appurtenant to the cellar the use of a watercloset, earthcloset, or privy, and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act ;(d) and

Unless the cellar has a fireplace, with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor(e) (except in the case of an inner or back cellar, let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash frame).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window.

(a) The penalty for an infringement of this section is imposed by the next section.

(b) As to what constitutes or amounts to occupation, see section 74, *post*.

(c) This section deals with cellars which were in existence at the passing of 11 & 12 Vict. c. 63, *i.e.*, in 1848, because by the last section, which re-enacts 11 & 12 Vict. c. 63, s. 67, no cellars can have been lawfully occupied as dwellings subsequent to that Act. It applies also to the future.

(d) See section 35, *ante*, p. 63.

(e) See the definition of *surveyor* in section 4, *ante*, p. 6.

Penalty on
persons
offending
against
enactment.

73. Any person who lets, occupies,(a) or knowingly suffers to be occupied for hire or rent,(b) any cellar contrary to the provisions of this Act, shall be liable for every such offence to a penalty(c) not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing(d) from the local authority in this behalf.

(a) See the next section.

(b) The words for *hire or rent* are not introduced into the two previous sections, which provide simply that it shall be unlawful to let, occupy, or suffer to be occupied as a dwelling any cellar, &c. There may, therefore, be a contravention of sections 71 or 72, to which this section does not apply. If so, it would appear that the only remedy would be by indictment for disobedience of a statute, which is a

misdeameor at common law. *Archbold's Criminal Law*, p. 2; and see *Reg. v. Walker*, *ante*, p. 70.

(c) As to the recovery of this penalty, see section 251, *post*.

(d) See as to the authentication and service of notices, sections 266, 267, *post*. Care must be taken to serve the notices on the several parties, the lessor and the occupier, according as the proceedings are to be taken.

**Note to
Section 73.**

74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act. Definition of occupying as a dwelling.

75. Where two convictions against the provisions of any Act (a) relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same) a court of summary jurisdiction (b) may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section. (c) Power to close cellars in case of two convictions.

(a) These words will, doubtless, apply to local Acts which contain provisions to prevent the occupation of cellars as well as to convictions under 11 & 12 Vict. c. 63, s. 7; 29 & 30 Vict. c. 93, s. 36, and this Act.

(b) See the definition in section 4, *ante*, p. 22.

(c) There is no provision for enforcing the order, but the disobedience to it would probably be an indictable misdemeanour. See *Archbold's Criminal Law*, ch. II., s. 10; *Reg. v. Walker*, *supra*.

COMMON LODGING-HOUSES. (a)

76. Every local authority shall (b) keep a register, in which shall be entered the names and residences of the keepers (c) of all common lodging-houses within the district of such authority and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein. Register of common lodging-houses to be kept.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded.

And a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

(a) The statutes, 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41, were the statutes which regulated common lodging-houses, but they are repealed by this Act. (See Schedule V., *post*.) The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), contains clauses as to the regulation of common lodging-houses, and in section 116 there is this definition of a "public lodging-house": "Every house shall be deemed a public lodging-house within the meaning of this Act, in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week." Lord Chief Justice COCKBURN and Lord HATHERLEY, when law officers of the Crown, advised the General Board of Health in 1853, thus: "It may be difficult to give a precise definition of the term 'common lodging-house;' but, looking to the preamble and general provisions of the Act (14 & 15 Vict. c. 28), it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received for short periods, and, though strangers to one another, are allowed to inhabit one common

**Note to
Section 76.**

room. We are of opinion that it does not include hotels, inns, public-houses, or lodgings let to the upper and middle classes." They afterwards explained the passage as to strangers thus: "Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household." And they added that, in their opinion, "the period of letting is unimportant, in determining whether a lodging-house comes under the Act now in question." In the memorandum prefixed to the model bye-laws issued by the Local Government Board under section 80, *post*, p. 102, it is stated that so far as the foregoing definition of a common lodging-house rests upon the basis of the habitation of a common room by lodgers who are strangers to one another in the sense of not being members of one family or household, it may be inferred that this characteristic equally distinguishes the common lodging-houses to which this Act applies; and that such an inference receives support from the terms of section 87, *post*.

An interpretation of the term "common lodging-house" is contained in section 89, *post*, p. 105, but it is not exhaustive.

In *Langdon v. Broadbent*, 37 L. T. (N.S.) 434; 42 J. P. 56, it was held that a lodging-house where hawkers and persons of a similar class were received, staying for various periods, having their meals in one room, and paying sixpence a night was a common lodging-house within the above section. GROVE, J., said: "Each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. The case does not find whether the lodgers occupied separate sleeping apartments. But I do not think it is necessary to show that the lodgers are all herded together in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And see *Halligan v. Ganly*, *infra*.

The appellant opened and kept a lodging-house for the reception of male lodgers, who slept in one common room capable of accommodating 100 persons. The lodgers were charged, at the discretion of the manager, a sum not exceeding fourpence per night for bed, supper, and breakfast; but the house was maintained, not for the purpose of gain, but for the accommodation of the poorest class of persons only, partly with a charitable, and partly with a religious object. The house had not been inspected or approved by the officer of the local authority, nor was it registered. The appellant having been summoned and convicted for keeping a common lodging-house in contravention of the provisions of 16 & 17 Vict. c. 41, s. 3:—Held, that the house, being maintained as a charitable institution and not for purposes of gain, was not a common lodging-house within the meaning of the Act, and that the conviction could not be supported. *Booth v. Ferrett*, 25 Q. B. D. 87; 59 L. J. M. C. 136; 63 L. T. (N.S.) 346; 38 W. R. 718; 55 J. P. 7; 6 T. L. R. 337.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 214, provides that the sanitary authority of any seaport town may make bye-laws relating to seamen's lodging-houses. See the section set out in the Appendix, *post*.

(b) Note that this provision is imperative. In a recent case the respondent, having fulfilled the necessary preliminaries under section 78, applied to be registered under this section, and the local authority passed a resolution that his house should be registered. The clerk did not carry out this resolution, and no formal registration of the respondent or of his house was made, and eight months afterwards the local authority resolved that his house should not be registered, and two months later prosecuted him for keeping a common lodging-house without being registered. The justices refused to convict and stated a case. It was held that for the purposes of the Act the resolution of the local authority constituted registration and that the justices were right in refusing to convict. *Coles v. Fibbens*, 52 L. T. (N.S.) 358; 49 J. P. 308.

(c) With regard to the meaning of the word *keeper*, the law officers already referred to in note (a) advised that where a person neither resides in the house nor exercises any control over its management, but simply receives the rent he cannot be considered *the keeper*; but where the owner, though not resident in the house, either in person or through an agent, colourably or otherwise, exercises control over its management, they had no doubt that he should be considered the keeper. *Halligan v. Ganly*, 19 L. T. (N.S.) 268, appears at first sight to be contrary to this opinion. It was a decision of the Common Pleas in Ireland, but it will be found to turn entirely on the definition of *public lodging-house* and *keeper* in a local Act. (27 & 28 Vict. c. cccv. s. 4.) It is not, therefore, an authority on the interpretation of the above section.

77. A person shall not keep a common lodging-house, or receive a lodger therein, unless the house is registered in accordance with the provisions of this Act; nor unless his name as the keeper thereof is entered in the register kept under this Act. **Section 77.**
All common lodging-houses to be registered, and to be kept only by registered keepers.

Provided that when the person so registered dies, his widow, or any member of his family (a) may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

(a) This is a word of wide extent and difficult to define. It will, doubtless, be best interpreted by the circumstances of each case. There is no authority for confining it to the person's children. See section 87, *post*, p. 105.

Section 86 provides a penalty for breach of the provisions of this section.

78. A house shall not be registered as a common lodging-house until it has been inspected and approved (a) for the purpose by some officer of the local authority; (b) and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate, for property of the yearly rateable value (c) of six pounds or upwards. Local authority may refuse to register houses.

(a) From the Memorandum of the Local Government Board already quoted, the following observations are taken:—"To the thoroughness of this inspection much importance should be attached. It is essential that in all structural details the fitness of the premises should be carefully ascertained before the house is placed on the register. The rules which should guide the inspecting officer in his examination of the premises may be thus briefly indicated:—The house should (1) possess the conditions of wholesomeness needed for dwelling-houses in general; and (2), it should have arrangements fitting it for its special purpose of receiving a given number of lodgers. (1.) The house should be dry in its foundations, and have proper drainage, guttering, and spouting, water properly laid, and substantial paving to any area or yard abutting on it. Its drains should have their connections properly made, and they should be trapped, when necessary, and adequately ventilated. Except the soil pipe from a properly-trapped water-closet, there should be no direct communication of the drains with the interior of the house. All waste pipes from sinks, basins, and cisterns should discharge in the open air over gullies outside the house. The soil pipe should always be efficiently ventilated. The closets and privies and the refuse receptacles of the house should be in proper situations, of proper construction, and adapted to any scavenging arrangements that may be in force in the district. The house should have a water supply of good quality, and, if the water be stored in cisterns, they should be conveniently placed, and of proper construction to prevent any fouling of the water. The walls, roof, and floors of the house should be in good repair. Inside walls should not be papered. The rooms and staircases should possess the means of complete ventilation, windows being of adequate size, able to be opened to their full extent, or if sash windows, both at top and bottom. Any room proposed for registration that has not a chimney should be furnished with a special ventilating opening or shaft, but a room not having a window to the outer air, even if it have special means of ventilation, can seldom be proper for registration. (2.) The numbers for which the house and each sleeping room may be registered will depend partly upon the dimensions of the rooms and their facilities for ventilation, and partly upon the amount of accommodation of other kinds. In rooms of ordinary construction to be used for sleeping, where there are the usual means of ventilation by windows and chimneys, about 300 cubic feet will be a proper standard of space to secure to each person; but in many rooms it will be right to appoint a larger space, and this can only be determined on inspection of the particular room. The house should possess kitchen and day-room accommodation apart from its bedrooms, and the sufficiency of this will have to be attended to. Rooms

**Note to
Section 78.**

that are partially underground may not be improper for day rooms, but should not be registered for use as bedrooms. The amount of water supply, closet, or privy accommodation, and the provision of refuse receptacles should be proportionate to the numbers for which the house is to be registered. If the water is not supplied from works with constant service, a quantity should be secured for daily use on a scale, per registered inmate, of not less than ten gallons a day where there are water-closets, or five gallons a day where there are dry closets. For every twenty registered lodgers a separate closet or privy should be required. The washing accommodation should, wherever practicable, be in a special place and not in the bedroom, and the basins for personal washing should be fixed, and have watertaps and discharge pipes connected with them.

(b) The lodging-house keeper should give notice to the authority and request them to send the proper officer to inspect. That officer is to approve of the house when he has inspected it. It is to be observed that if the house is inspected and approved the local authority have no discretion enabling them to refuse to register. "The Act imposes an obligation on the local authority to complete the registration of a common lodging-house after they once pass over the opportunity for refusal provided by the 78th section." Per MATHEW, J., in *Coles v. Fibbens*, *ante*, p. 100. But if the officer has refused to approve, the local authority are not bound to hear the applicant in support of his application for a license. *Ex parte Cavanagh*, 10 T. L. R. 533.

(c) Probably this means *net annual value*, which is defined in section 4, *ante*, p. 11.

Notice of
registration to
be affixed to
houses.

79. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words, "Registered Common Lodging-house," in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

(a) See as to the recovery of this penalty, section 251, *post*.

80. Every local authority shall from time to time make bye-laws (a) —

- (1.) For fixing, (b) and from time to time varying, the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein ; and
- (2.) For promoting cleanliness and ventilation in such houses ; and
- (3.) For the giving of notices and the (c) taking precautions in the case of any infectious disease ; and
- (4.) Generally for the well ordering of such houses. (d)

(a) As to the making of bye-laws, see section 182 ; as to their confirmation, section 184 ; and as to their enforcement, section 251, *post*. Model bye-laws have been issued by the Local Government Board for the use of sanitary authorities under this section ; and it will be convenient if these are adopted with as little variation as the circumstances of each case will permit.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, s. 214), provides that the sanitary authority within whose district any seaport town is situate may, with the approval of the President of the *Board of Trade*, from time to time make, revoke, alter, and amend bye-laws relating to seamen's lodging-houses in such town. The section is too long for insertion in this note, but it will be found in full in the Appendix.

(b) The provision for *varying* the number is new. Lord CAIRNS advised that when the number had been fixed it could not be varied under the previous Acts.

Bye-laws to
be made
by local
authority.

(c) This is new. See section 84, *post*. See also sections 120—130, *post*, as to infectious diseases, especially section 128, which imposes a penalty on persons who let houses or rooms in which infected persons have been lodging.

Note to Section 80.

(d) These are very general words, and apply not only to the state of the house, but, as it seems, to the conduct of the inmates, so that all disorder in any house may be prevented. The model bye-laws do not, however, contain any provisions of this nature.

81. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, (a) the local authority may by notice in writing (b) require the owner (c) or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; (d) and, if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Power to local authority to require supply of water to houses.

(a) It appears that this is matter for the determination of the local authority. See the general provisions for the supply of water, section 62, *ante*, p. 87; and the Public Health (Water) Act, 1878, *post*.

(b) See as to such notice and its service, sections 266, 267.

(c) See the definition in section 4, *ante*, p. 6. As the notice may be given to the owner or keeper it would be right, if the notice be given to the former, that the latter should also receive information, otherwise his name may be removed from the register without his knowledge. The better plan would be to serve the notice upon both.

(d) Query, whether these words would enable the local authority to specify the works to be done. See the cases on similar words in the notes to section 94, *post*, p. 116.

82. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall, if he fails to do so, be liable to a penalty not exceeding 40s.

Limewashing of houses.

This penalty will be over and above what he may be required to do under any bye-law. As to the recovery of this penalty, see section 251, *post*.

83. The keeper of a common lodging-house in which beggars or vagrants are received to lodge, shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required, and transmit to the local authority.

Power to order reports from keepers of houses receiving vagrants.

If the local authority act upon this section they must specify for what period the report is to be made. The mode of transmission is not stated, but transmission by post will probably be sufficient. Failure to make this report renders the keeper liable to a penalty under section 86, *post*.

The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 14, contains provisions as to harbouring thieves or reputed thieves in lodging-houses, or suffering them to meet or assemble therein.

84. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, (a) give immediate notice (b) thereof to the medical officer of health (c) of the local authority,

Keepers to give notice of fever, &c., therein.

Section 84. and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated.(d)

(a) See the provisions of sections 120—130, *post*, as to infectious diseases. The bye-laws under section 80, *ante*, p. 102, may contain provisions similar in effect to this section.

See also the provisions of the Infectious Disease (Notification) Act, 1889, *post*.

(b) The statute does not require notice in writing, and a verbal notice may be held to be sufficient, but it is most desirable that it should be in writing. The model bye-laws require a written notice to be given (No. 18).

(c) The Common Lodging-Houses Act 1851 (14 & 15 Vict. c. 28), s. 10, required the notice to be given to the medical officer of the union, but now it is to be given to the medical officer of health of the authority appointed under sections 189 or 190, *post*.

(d) Section 124, *post*, provides for the removal of the sick person to a hospital in certain cases.

See section 86, *post*, as to the penalty for non-compliance with the provisions of this section. In places where the Public Health Acts Amendment Act, 1890, is in operation the defendant will also be liable to a penalty under section 32 of that Act. See the section and the notes thereto, *post*.

As to inspection.

85. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer(a) of the local authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds.(b)

(a) The section does not require such officer to produce any specific authority for his demand of inspection, thus altering the provision in 11 & 12 Vict. c. 63, s. 66. Moreover, the limitation of the hours of admission therein specified is omitted.

The keeper of a common lodging-house, on access to the house being demanded by two officers of a local authority, refused access (1) to a room which opened off a licensed room and could only be entered through it (this room had not been observed when the premises were inspected with a view to the license being granted, and was not itself licensed); (2) to two rooms which were licensed, but which he had shut off entirely from the rest of the house, which had a separate entrance to the street, and which, after giving notice to the local authority that he had ceased to use them as part of the lodging-house, he had let to a monthly tenant:—Held, that in refusing access to the first-mentioned room he had contravened the statute, but otherwise in regard to the other two rooms. *Gunn v. Cadenhead*, 15 Ct. of Sess. Cas., 4th series (J. C.) 57.

(b) See as to the recovery of this penalty, section 251, *post*.

Offences by keepers of houses.

86. Any keeper of a common lodging-house who—

- (1.) Receives any lodger in such house without the same being registered under this Act;(a) or
- (2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act,(b) of the persons resorting to such house; or
- (3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease;(c)

shall be liable to a penalty(d) not exceeding five pounds, and in the case

of a continuing offence, to a further penalty not exceeding forty shillings for every day during which the offence continues. Section 86. (e)

(a) Possibly registration under previous sanitary Acts may suffice, but it would be advisable to register again under this Act. As to what amounts to registration, see *Coles v. Fibbens*, ante, p. 100.

(b) See section 83, ante, p. 103.

(c) See section 84, ante, p. 103. See also the Infectious Disease (Notification) Act, 1889, and the Public Health Acts Amendment Act, 1890, post. The last-mentioned Act, by section 32, imposes a penalty of 40s. and a daily penalty of 5s. where it is in force; it may, therefore, supersede the penalty under the above section so far as regards this offence.

(d) See as to the recovery of this penalty, section 251, post.

(e) There is no reference here to breach of the bye-laws, as this is provided for in sections 183 and 251, post. The continuing here, it is presumed, must refer to continuance after the conviction.

87. In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same family, (a) the burden of proving such allegation shall lie on the persons making it. Evidence as to family in proceedings.

(a) It does not appear why the allegation should be made. The corresponding section 41 of the Sanitary Act, 1866 (29 & 30 Vict. c. 90), was applicable to prosecutions for overcrowding, but no such mischief is provided for in lodging-houses specially. It may be material, however, with reference to the question whether a house is a lodging-house or not. See section 76, note (a), ante. It may also be material whether a bye-law had been infringed whereby provision is made for the separation of the sexes, where the family is young, and consisting of both sexes.

It may be doubtful what is meant by the word *family*. See section 77, ante, and section 91, post, when the word occurs again.

88. Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act (a) relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous license in writing of the local authority, which license the local authority may withhold or grant on such terms and conditions as they think fit. Conviction for third offence to disqualify persons from keeping common lodging-house.

(a) It is very doubtful whether convictions under previous Acts can be brought under the purview of this section. The section is penal, and will probably be construed strictly, in accordance with the general rule for the interpretation of penal statutes.

K. was duly entered in the register of the B. urban authority as keeper of a common lodging-house. Two months later the inspector reported that it was kept as a house of bad repute, and the health committee, by resolution, withdrew the license, and ordered K. to clear out his lodgers in a week; and on his refusal he was charged with keeping the house without being registered:—Held, the justices were right in dismissing the information, as there was no power to cancel the license except for the reasons set forth in the statute. *Blake v. Kelly*, 52 J. P. 263.

89. For the purposes of this Act the expression “common lodging-house” includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house. Interpretation of “common lodging-house.”

It is difficult to say who is the keeper of the lodging-house in this case, whether the person who is the landlord or tenant of the whole house or the tenant of that part which is let and is so appropriated to the use of lodgers.

**Note to
Section 89.**

It is to be noticed with reference to the note on section 76, *ante*, p. 99, that this section does not contain a definition of the word, but only an application to a particular case.

See the observations as to the difference in the meaning of the words "includes" and "means," p. 4, *ante*.

BYE-LAWS AS TO HOUSES LET IN LODGINGS.(a)

Local Govern-
ment Board
may em-
power local
authority
to make bye-
laws as to
lodging-
houses.

90. *The Local Government Board may, if they think fit, by notice published in the "London Gazette," declare the following enactment to be in force within the district or any part of the district of any local authority, and from and after the publication of such notice such authority(b) shall be empowered to make bye-laws(c) for the following matters (that is to say) :—*

- (1.) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family,(d) and for the separation of the sexes in a house so let or occupied :
- (2.) For the registration of houses so let or occupied :
- (3.) For the inspection of such houses :
- (4.) For enforcing drainage and the provision of privy accommodation for such houses,(e) and for promoting cleanliness and ventilation in such houses :
- (5.) For the cleansing and limewashing at stated times(f) of the premises, and for the paving of the courts and courtyards thereof :
- (6.) For the giving of notices and the taking of precautions in case of any infectious disease.(g)

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses.(h)

(a) In recent decisions of the Court of Appeal a distinction has been drawn between houses which are let in separate tenements, the landlord retaining no control over the house ; and houses in which, though some or all of the rooms are let, the landlord resides personally or by an agent, or otherwise exercises some control. The tenants of the tenements in the former case were held not to be lodgers within the meaning of the Registration Acts. *Bradley v. Baylis*, 8 Q. B. D. 194 ; 51 L. J. Q. B. 183 ; 46 L. T. (N.S.) 253 ; 30 W. R. 823 ; 45 J. P. 847 ; *Anketill v. Baylis*, 10 Q. B. D. 577 ; 31 W. R. 233 ; 52 L. J. Q. B. 104 ; 47 J. P. 356 ; 48 L. T. (N.S.) 343. These decisions appear to be of general application, and if so they will limit the number of houses to which this section applies. In *Bradley v. Baylis*, JESSEL, M.R., made the following observations :—"First of all, take the case of a lodger. It seems to me, as to unfurnished lodgings (and I will only deal with unfurnished lodgings, as it is the only class of cases with reference to which questions are likely to arise), where the owner of the house does not let the whole of it, but retains a part of his own residence and resides there, and when he does not let out the passages, staircase, and outer door, but gives to the inmates merely a right of ingress and egress, and retains to himself the general control, with the right of interfering—I do not mean an actual interference, but a right to interfere, a right to turn out trespassers, and so on—there I consider such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a lodger. That is one extreme case. Now, I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal

ownership for the time demised and retains no control over the house ; there, in my opinion, the inmates are *occupying tenants*, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door ? I think not. Does it make any difference that the landlord does not reside there personally, but has resident servants who occupy on his behalf part of the house ? I think not. I think that the inmates are still *lodgers*. Does it make any difference that the landlord does or does not repair ? I think not ; they are still *lodgers*." See also *Phillips v. Henson*, 3 C. P. D. 26 ; 47 L. J. C. P. 273 ; 37 L. T. (N.S.) 432 ; 26 W. R. 214 ; 42 J. P. 137 ; *Morton v. Palmer*, 9 Q. B. D. 89 ; 51 L. J. Q. B. 307 ; 46 L. T. (N.S.) 285 ; 30 W. R. 115 ; 46 J. P. 150 ; *Ness v. Stephenson*, 9 Q. B. D. 245 ; 47 J. P. 134. In the latter case it was held that if the landlord, reserving a room in a house, lets the rest of it to a person, but retains such control and dominion over it as is usually retained by masters of houses let in lodgings, the relation of landlord and lodger may exist between the parties within the meaning of the Lodgers Goods Protection Act, 1871 (34 & 35 Vict. c. 79), although the lodger has the right of exclusively occupying the greater part of the premises and has separate and uncontrolled power of ingress and egress, and neither the landlord nor his agent sleeps or resides in the house and his lodger acts as caretaker of the part reserved ; and that the existence of the relationship of landlord and lodger is a question of fact. In a recent case decided with reference to that Act, the appellant occupied the first floor and basement of premises at a yearly rent, carrying on the business of a publisher there, but sleeping and residing elsewhere. He had no key of the outer door, which was under the control of his immediate landlord, who admitted him every morning. It was held that he was not a lodger. A lodger in the popular sense of the word means one who sleeps on the premises. *Heawood v. Bone*, 13 Q. B. D. 179 ; 51 L. T. (N.S.) 125 ; 48 J. P. 710.

A bye-law made under this section required certain particulars to be furnished to the local authority by the occupiers of houses let in lodgings or occupied by members of more than one family. The defendant was charged under this bye-law, and it was proved that she was the tenant of a house, sub-letting unfurnished rooms to one person and occupying the rest of the house herself. It was held on a case stated that the house was a lodging-house within the meaning of the bye-law and that there was nothing unreasonable in a bye-law applying to such a house. *Roots v. Beaumont*, 50 J. P. 244 ; 51 J. P. 197.

The Local Government Board have issued model bye-laws under this section. In the memorandum prefixed to the bye-laws it is stated that the Board have had regard to the judgment of GROVE, J., in *Langdon v. Broadbent*, set out at p. 100, *ante*, and have exempted from the operation of the bye-laws certain houses let in lodgings which from their character are not likely to require supervision. The memorandum states that the exemption clause consists of two sections, of which one relates to unfurnished, and the other to furnished lodgings. It assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the bye-laws. In the case of houses of higher rateable value the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will rest with the local authority, when framing bye-laws upon the bases of the model series, to determine what limits of rateable value or rent the circumstances of their district may render it desirable to prescribe.

(b) By the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), s. 8, *post*, local authorities are now empowered to make bye-laws under this section without any declaration by the Local Government Board. The effect of the enactment is practically to repeal the opening words of the section down to the end of the word "notice."

(c) As to the making, confirmation, publication, and enforcing of bye-laws, see sections 182—186, 251, *post*. As to the houses which should be affected by such bye-laws, see note (a), *supra*.

(d) See the notes on this word in sections 77 and 87, *ante*, pp. 101 and 105. In the model series above mentioned the Local Government Board have deemed it inexpedient to provide for a variation of the number of occupants or for the separation of the sexes. The omission of the latter provision is due "to the doubt which the Board have entertained as to how far this desirable object can be

**Note to
Section 90.**

practically attained, in view of the ordinary conditions of life in lodgings of the poorer class. When, however, the local authority are satisfied that a rule on this subject can be enforced without hardship, as, for instance, in cases where it is found that individual holdings in the lodging-houses of a district generally comprise two or more rooms, the Board will readily co-operate with the authority in framing a bye-law to provide for the separation of the sexes."

(e) These bye-laws will not prevent the enforcing of the provisions of this Act which apply to these matters. No bye-laws on this subject are included in the model series, as the Board considered the statutory provisions on this subject to be sufficient without them.

(f) These times must be stated in the bye-laws. See section 82, *ante*, p. 103, as to common lodging-houses.

(g) Bye-laws for these purposes are rendered unnecessary in districts where the Infectious Disease (Notification) Act, 1889, *post*, has been adopted.

(h) This passage was introduced from the Sanitary Act, 1866 (29 & 30 Vict. c. 90), s. 36, which was passed when the Common Lodging-House Acts were in force.

Reference may here be made to the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 214, which provides for seamen's lodging-houses, and is set out in the Appendix; also to the Housing of the Working Classes Act, 1890, *post*, which consolidates and amends all the previous Acts relating to workmen's dwellings and lodging-houses for the labouring classes.

NUISANCES. (a)

Definition of
nuisances.

91. For the purposes of this Act—

1. Any premises^(b) in such a state as to be a nuisance or injurious to health :^(c)
2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health :^(d)
3. Any animal so kept as to be a nuisance or injurious to health :^(e)
4. Any accumulation or deposit which is a nuisance or injurious to health :^(f)
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :^(g)
6. Any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses),^(h) not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :⁽ⁱ⁾
7. Any fireplace or furnace which does not, as far as practicable, consume the smoke^(k) arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke^(k) in such quantity as to be a nuisance,

shall be deemed to be nuisances(*l*) liable to be dealt with summarily in Section 91. manner provided by this Act : Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court(*m*) that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public(*n*) health :

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume, as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having charge thereof.(*o*)

(*a*) For definition of nuisance, see section 111, *post*, and note.

(*b*) See the definition in section 4, *ante*, p. 6.

It has been held that these words do not apply to a nuisance arising from sewage tanks and works constructed under this Act by a local board, and that a court of summary jurisdiction has, therefore, no power, on proof of a nuisance so caused, to make an order for its abatement. *Reg. v. Parlbby*, 22 Q. B. D. 520 ; 58 L. J. M. C. 49 ; 60 L. T. (N.S.) 422 ; 37 W. R. 335 ; 53 J. P. 327 ; 5 T. L. R. 257. In the course of his judgment in that case, WILLS, J., referring to this clause, said : “ It is clear that the expression ‘ premises in such a state as to be a nuisance ’ has not the wide application claimed for it by the respondents, who say that it is answered by any premises on which a nuisance exists. If that were so, the enumeration of, at all events, the several kinds of nuisance specified under the subsequent heads would be unnecessary. We do not attempt to define every class of case to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life or limb.”

Therefore, if a nuisance arises from sewage works, the persons aggrieved are left to their remedy by action. An injunction in such a case was granted in *Downing v. Falmouth United Sewerage Board*, 4 T. L. R. 552.

(*c*) Upon similar words in 18 & 19 Vict. c. 121, s. 10, it was held that the percolation and dripping of water from a railway bridge on to the road beneath was not a nuisance within the Act. *Great Western Railway v. Bishop*, L. R. 7 Q. B. 550 ; 41 L. J. M. C. 120 ; 26 L. T. (N.S.) 905 ; 20 W. R. 969 ; 37 J. P. 5. But though the word nuisance as used in this section does not include every common law nuisance, it is not necessary that a nuisance in order to be within this Act should also be injurious to health, inasmuch as the terms used are disjunctive, nuisance *or* injurious. It is sufficient if the nuisance is one which interferes with personal comfort. Per STEPHEN, J., in *Bishop Auckland Local Board v. Bishop Auckland Iron Company*, 10 Q. B. D. 138 ; 52 L. J. M. C. 38 ; 31 W. R. 288 ; 48 L. T. (N.S.) 223 ; 47 J. P. 389. In that case an accumulation or deposit of cinders, ashes, and refuse which were allowed to smoulder and throw off strong fumes of effluvia, were held to be a nuisance and within this section, though they were not injurious to health. See also *Banbury Sanitary Authority v. Page* (decided upon similar words in section 47), 8 Q. B. D. 97 ; 51 L. J. M. C. 21 ; 45 L. T. (N.S.) 759 ; 30 W. R. 415 ; 46 J. P. 184 ; *Malton Sanitary Authority v. Malton Farmers’ Manure Company*, 4 Ex. D. 302 ; 49 L. J. M. C. 90 ; 40 L. T. (N.S.) 755 ; 27 W. R. 802 ; 44 J. P. 155 ; *Houldershaw v. Martin*, 49 J. P. 179 ; 1 T. L. R. 323.

**Note to
Section 91.**

The words of the clause are "premises in such a state," &c. It would appear, therefore, that they apply only to premises which but for their condition would not be a nuisance, and not to premises which are a nuisance by reason of the purposes for which they are used. Thus, it is submitted that they would not apply to premises used for an offensive trade so long as the condition of the premises was not in question. Nor would they apply to a building which was a nuisance only by reason of its being used as a hospital for infectious diseases, as in *Metropolitan Asylums District v. Hill*, 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 29 W. R. 617; 45 J. P. 664. There it was held that an asylum for the reception of poor persons suffering from small-pox or other infectious or contagious disorders may be a nuisance which may be restrained by injunction, though erected and maintained under the provisions of an Act which enables, but does not order, such asylums to be erected; and see *Bendelow v. Wortley Union (Guardians of)*, 4 T. L. R. 67, and *Garton v. Guildford, Godalming, and Woking Joint Hospital Board*, "Times," 23rd March, 1895. On the other hand, it is submitted that a house which is a nuisance by reason of its being ruinous and likely to fall down might be a nuisance within this section. A house in such a condition may be a nuisance at common law. *Reg. v. Watts*, 1 Salk. 357. And see *Chauntler v. Robinson*, 4 Ex. 163; *Leslie v. Pounds*, 4 Taunt. 649; *Silverton v. Marriott*, 59 L. T. (N.S.) 61; 52 J. P. 677. As to the liability of a person for allowing premises to be out of repair, and so a nuisance whereby injury is caused, see *Payne v. Rogers*, 2 H. & Bl. 350; *Todd v. Flight*, 9 C. B. (N.S.) 377; 30 L. J. C. P. 21; *Gandy v. Jubber*, 9 B. & S. 15; 13 W. R. 1022; *Pretty v. Bickmore*, L. R. 8 C. P. 401; 28 L. T. (N.S.) 704; 21 W. R. 733; 37 J. P. 552; *Nelson v. Liverpool Brewery Company*, 2 C. P. D. 311; 46 L. J. C. P. 675; 25 W. R. 877; *Gwinnell v. Eamer*, L. R. 10 C. P. 658; 32 L. T. (N.S.) 835; *Sandford v. Clarke*, 21 Q. B. D. 398; 57 L. J. Q. B. 507; 59 L. T. (N.S.) 226; 37 W. R. 28; 52 J. P. 773; *Bowen v. Anderson* [1894], 1 Q. B. 164; 42 W. R. 236; 58 J. P. 213; 10 R. 47. The case of *Sandford v. Clarke* was one in which injury was caused by a defect in a coal plate in the pavement in front of a house. A similar defect was the cause of action in *Braithwaite v. Watson*, 5 T. L. R. 331.

As to a nuisance for an accumulation of soil causing damp to adjoining house whereby it becomes unhealthy, see *Hurdman v. North Eastern Railway Company*, 3 C. P. D. 168; 47 L. J. C. P. 368; 42 J. P. 388.

(d) See section 41, *ante*, p. 68, and section 47, *ante*, p. 74. It should be observed that this clause relates only to a drain, not to a sewer. See per WILLS, J., in *Reg. v. Parlbly*, *supra*. See also *Molloy v. Gray*, 24 L. R. Ir. 258. In that case the owner and occupier of a house within a sanitary district was summoned at petty sessions by the sanitary authority for causing the watercloset attached to the house to discharge night soil into the water channel under the main street of N., a town within the district, causing a dangerous nuisance. It was proved that the channel or drain in question was, from its size and from having a gravel bottom, unsuited to receive and carry off faecal matter, and was only intended to carry off surface water. There was no other sewer in N. into which the sewage from the houses could be discharged, but the sanitary authority had made arrangements for the carting away of sewage weekly. There was no evidence of any nuisance on the defendant's premises, but it appeared that the drain or channel was in a most offensive state; and the justices being satisfied that a nuisance existed, ordered the defendant to disconnect the soil-pipe of the watercloset with the drain in the main street, so as to prevent any deposit or accumulation from the watercloset being discharged into the drain. On a case stated:—Held (*diss. Dowse, B.*), that the justices' order was wrong and should be quashed.

An owner of a public-house erected a urinal in a private passage leading out of the street, and enclosed it between doors, which he kept locked at night. There was a space between the line of area railings in the street and the urinal door nearest to the street, which space he shut off from the street with an iron gate placed flush with the line of railings. This gate was never locked. It was proved that persons habitually used the space between the door and the gate in such a manner as to cause to the neighbours a nuisance, which he took no steps to prevent:—Held by KAY, J., that he was responsible for such user, it being a probable consequence of the manner in which he had arranged the premises. *Chibnall v. Paul and Son*, 29 W. R. 536.

The appellants were possessed of chemical works at H., and were entitled to discharge refuse by two separate drains into a public sewer. By the one drain liquid impregnated with muriatic acid was discharged, and by the other drain liquid

impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellants' drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices on the appellants:—Held, that the escape of the gas was a nuisance within the meaning of the corresponding provisions of 18 & 19 Vict. c. 121, s. 8; that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance. *St. Helen's Chemical Company v. Corporation of St. Helen's*, 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. 397; 40 J. P. 471. It is to be observed that this decision was given with reference to 18 & 19 Vict. c. 121, but that Act contains no definition of drain and sewer, and it may be questioned whether the decision is applicable to this section.

**Note to
Section 91.**

It may here be mentioned that in districts where the Public Health Acts Amendment Act, 1890, has been adopted, it is an offence to turn into a sewer any injurious matter or any chemical waste, steam, heated water, &c., which alone or in combination with the sewage causes a nuisance or is dangerous or injurious to health. See sections 16 and 17 of that Act, *post*.

See *R. v. Pedley*, 1 A. & E. 822; 3 L. J. M. C. 119, as to the erection and use of privies which became a nuisance for want of cleansing. *Russell v. Shenton*, 3 Q. B. 449; 11 L. J. Q. B. 289, as to a nuisance from omitting to cleanse drains.

It may be mentioned here that under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 8, sub-sect. (1), a parish council have power to deal with any pond, pool, open ditch, drain, or place containing or used for the collection of any drainage, filth, stagnant water, or matter likely to be prejudicial to health by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority. Sub-section (3) of the same section provides that nothing in the section shall derogate from any obligation of a district council with respect to the execution of sanitary works.

(e) See section 44, *ante*, p. 71, as to the bye-laws relating to the keeping of animals on premises; and section 47 as to keeping swine in a dwelling-house or so as to be a nuisance to any person. The procedure under this and the following sections may in some cases be preferable to that under the bye-laws or for a penalty under section 47. It will be observed that the bye-laws under section 44 relate to the keeping of animals so as to be injurious to health. This section applies to the keeping of animals so as to be a nuisance or injurious to health. Again, section 47 relates only to the keeping of swine, while this section applies generally to the keeping of any animals. The above provision is therefore much more extended in scope than either of the former sections.

In addition to the cases cited in the note to sections 44 and 47, *Draper v. Sperring*, 10 C. B. (N.S.) 113; 30 L. J. M. C. 225; 4 L. T. (N.S.) 365; 25 J. P. 566, may be referred to. There sheep droppings in a market were held to amount to a nuisance.

(f) See sections 42, 43, and 49, *ante*, and the cases cited in the notes to these sections; and *Draper v. Sperring*, *supra*.

Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, it was held that he was liable to be convicted under a local Act which imposed a penalty on offensive matter being kept so as to cause a nuisance. *Smith v. Waghorn*, 27 J. P. 744. As to accumulation of sea-weed in a harbour, see *Margate Pier and Harbour Proprietors v. Margate Town Council*, 20 L. T. (N.S.) 564; 33 J. P. 437. A plea of enjoyment of right for twenty years of a mixen on defendant's land contiguous and near to plaintiff's house, whereby during all that time offensive smells necessarily and unavoidably arose from the said mixen, was held bad on the ground that it did not show a right to cause offensive smells on the plaintiff's premises, nor that any smells had in fact been used to pass beyond the limits of defendant's own land. *Flight v. Thomas*, 10 A. & E. 590; 8 L. J. Q. B. 337.

(g) This passage renders immaterial the decision of the Court of Queen's Bench in *Rye Union (Guardians of) v. Payne*, 44 L. J. M. C. 148; 39 J. P. 375.

In a Scotch case, decided by the High Court of Justiciary, *Home v. Local Authority of Kelso*, 3 Coup. 239, it was held that when a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance.

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As to the overcrowding of a chapel used as a night shelter for destitute persons see *Reg. v. Mead, Ex parte Gates*, 59 J. P. 150; 11 T. L. R. 204, 242.

(h) The words in the parenthesis were repealed by the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 107, and Schedule VI. See as to bakehouses, *ante*, pp. 21 and 29.

(i) By the Factory and Workshop Act, 1878 (*supra*), s. 101, it is provided that the provisions of this section with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of that Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, or workplace.

The Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), contains provisions relating to the sanitary condition of factories and workshops. The full text of these provisions is set out in the Appendix, but it may here be mentioned that sections 3 and 33 of the Factory and Workshop Act, 1878, which relate to cleanliness, ventilation, and overcrowding in, and limewashing of, factories and workshops, shall cease to apply to workshops; and by section 4 every workshop and workplace not kept free from effluvia from any drain, &c., shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(k) See the 2nd of the provisos of this section.

A local improvement Act enacted that every furnace used should be constructed so as to consume its own smoke, or if any person should use a furnace not so constructed, or should use such furnace so negligently that the smoke should not be consumed, every person so offending, being the owner or occupier, or being a foreman or other person employed by such owner or occupier, should forfeit a sum of 5*l.* W., the owner, used furnaces properly constructed, and employed a competent person to use them, but without W.'s knowledge, the servant negligently used them so that smoke was not consumed. It was held (*BLACKBURN J., dissenting*), that the servant only could be convicted of the offence, and not the master. *Willcock v. Stands*, 32 J. P. 565.

The respondents were summoned for sending forth black smoke on a certain day from a chimney of premises belonging to them (not being the chimney of a private dwelling-house) in such quantity as to be a nuisance within the meaning of the Nuisances Removal Acts (18 & 19 Vict. c. 121, s. 12; 23 & 24 Vict. c. 77, s. 13; 29 & 30 Vict. c. 90, s. 14). At the hearing proof was given that black smoke issued from the chimney on the day named so as to be a nuisance, and that the premises were in the occupation of the respondents, and used as a factory. No evidence was adduced to show that any enquiry had been made to find out who had charge of the furnace causing the smoke at the time of the emission, and the justices, therefore, discharged the respondents. It was held, that the respondents were properly summoned, as the persons by whose permission the nuisance arose, and were responsible as such, if the person causing the smoke to issue was their servant. *Barnes v. Ackroyd*, L. R. 7 Q. B. 474; 41 L. J. M. C. 110; 26 L. T. (N.S.) 692; 20 W. R. 671; 37 J. P. 116.

G.'s mill sent forth black smoke for more than ten minutes. The furnace was properly constructed and superintended by efficient firemen, and the stoker's own negligence was the cause of the smoke. G. was summoned for a nuisance within the meaning of the above section. It was held that the justices were wrong in dismissing this charge, and in holding that G. was not liable. *Niven v. Greaves*, 54 J. P. 548.

In the preceding case the court distinguished a case decided under a different statute. There the defendant who was the owner and occupier of certain premises in the metropolis used for the purpose of manufacture was summoned under the Smoke Nuisance (Metropolis) Act, 1853 (16 & 17 Vict. c. 128), s. 1, for negligently using a furnace in such premises so that the smoke arising therefrom was not effectually consumed. The furnace in question was constructed so as to consume its own smoke if carefully used; and the emission of smoke complained of was caused by the carelessness of the stoker employed by the defendant to attend to the furnace. The defendant was not personally guilty of any negligence in connection with the matter. It was held that the defendant was not criminally responsible for the negligence of his servant, and could not be convicted of the offence. *Chisholm v. Doulton*, 22 Q. B. D. 736; 58 L. J. M. C. 133; 60 L. T. (N.S.) 96; 37 W. R. 749; 53 J. P. 550; 5 T. L. R. 250, 437.

A furnace which is properly constructed may be so improperly used as to render the person using it liable to a fine under this section. *Dumfries Commissioners v. Murphy*, 11 Ct. of Sess. Cas. (4th ser.), p. 694.

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See also *Reg. v. Waterhouse*, mentioned in the notes to section 98, *post*, p. 122.

In *Barnes v. Norris*, 41 J. P. 150, B. charged N. that black smoke issued from certain chimneys on his premises so as to cause a nuisance. There were five separate chimneys together, each used for a separate purpose. N. objected that the summons was bad for not showing from which of the chimneys the smoke was said to issue:—Held, that the justices were wrong in allowing this objection, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Semble*, per CLEASBY, B., that if there were several chimneys together which sent forth smoke, though each might not of itself send forth sufficient to be a nuisance, yet an offence might be committed.

Smoke, unaccompanied with noise or with noxious vapour, noise alone, and offensive odours alone, although not injurious to health, may severally constitute a nuisance. The material question in all such cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence. An injunction was passed to restrain the issuing of smoke and effluvia from a factory chimney and the making of noise in the factory, though it was situated in a manufacturing town; it being proved that such smoke, effluvia, and noise were a material addition to previously existing nuisances. *Crump v. Lambert*, L. R. 3 Eq. 409, affirmed on appeal, 17 L. T. (N.S.) 133. See also *Saville v. Kilner*, 26 L. T. (N.S.) 277. *Lambton v. Mellish* [1894], 3 Ch. 163; 63 L. J. Ch. 929; 71 L. T. (N.S.) 385; 43 W. R. 5; 58 J. P. 835; 8 R. 807; 10 T. L. R. 601; *Husey v. Barley*, 11 T. L. R. 221; *Rapier v. London Tramways Company* [1893], 2 Ch. 588; 63 L. J. Ch. 36; 69 L. T. (N.S.) 361; 9 T. L. R. 59; 2 R. 448. (As to noxious trades, see sections 112—15, *post*.) Smoke need not be injurious to health in order to be a nuisance within this and the following sections. *Gaskell v. Bayley*, 30 L. T. (N.S.) 516; 38 J. P. 293.

As to the liability on indictment for causing a nuisance by smoke, see *R. v. White*, 1 Burr. 333; *Reg. v. Deusnap*, 16 East, 194. It is to be observed, however, that a defendant cannot be punished under this Act as well as on indictment or similar proceedings; see sections 111, 340, 341, *post*. As to the right of action for damage to property caused by smoke, see *St. Helen's Smelting Company v. Tipping*, 11 H. L. Cas. 642.

As to the liability of the owner for a smoke nuisance caused by his tenant, see *Rich v. Basterfield*, and the remarks thereon in *Harris v. James*, *post*.

As to the liability of a railway company for smoke nuisances caused by locomotives, see 8 & 9 Vict. c. 20, s. 114, and 31 & 32 Vict. c. 119, s. 16. The latter section was passed to provide for circumstances to which it was held that the former did not apply. See *Manchester, Sheffield, &c., Railway Company v. Wood*, 2 E. & E. 344; 29 L. J. M. C. 29; 1 L. T. (N.S.) 31; 24 J. P. 38.

Smoke caused by the smelting of ores was held not to be within the prohibition in 29 & 30 Vict. c. 90, s. 10, by reason of the exception in 18 & 19 Vict. c. 121, s. 44. *Norris v. Barnes*, L. R. 7 Q. B. 537; 41 L. J. M. C. 154; 26 L. T. (N.S.) 622; 20 W. R. 703; 37 J. P. 246.

But the chimney of a coal mine may be within this section. It is subject to the exemption under section 334, but whether it is exempt or not from prosecution depends on whether the smoke nuisance can be prevented reasonably without obstructing the efficient working of the mine. If it can be prevented without obstructing the efficient working of the mine then the chimney of a coal mine is just as subject to the operation of this section as any other chimney. *Patterson v. Chamber Colliery Company*, 56 J. P. 200; 8 T. L. R. 278. See also the notes to section 334, *post*.

(i) As already stated in note (b), this section does not apply to every nuisance which may be made the subject of indictment or action at law or in equity. The nuisances which are enumerated in this section, however, may be remedied by ordinary legal proceedings as well as under this Act, subject, however, to the proviso in section 111, *post*, that no person shall be twice punished for the same offence. See also sections 340, 341, *post*.

The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58, s. 37), provides that where any mine to which that Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof and every other person interested in the minerals of such mine shall cause the top of every shaft, and any side entrance from the surface, to be and to be kept securely fastened for the prevention of accidents: Provided that—(i.) Subject

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to any contract to the contrary the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs, charges, and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect. (ii.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise. If any person fails to act in conformity with this section, he shall be guilty of an offence against this Act. No person shall be precluded by any agreement from doing, or be liable under any contract to any damages, penalty, or forfeiture, for doing such acts as may be necessary in order to comply with the provisions of this section. If any occupier of land or other person wilfully obstructs the owner of a mine, or other person interested as aforesaid in doing any such acts, he shall be guilty of an offence against this Act. Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, shall be deemed to be a nuisance within the meaning of section 91 of the Public Health Act, 1875.

The Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 13, contains provisions in the same terms as to the abandonment of mines to which that Act applies with this addition, "that where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within 50 yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous."

The Quarry (Fencing) Act, 1887 (50 & 51 Vict. c. 19), contains a similar provision relating to the fencing of quarries. The text of all these Acts is set out in full in the Appendix, *post*.

The Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), s. 9, provides that a tent, van, shed, or similar structure, used for human habitation, which is in such a state as to be a nuisance or injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of this section, and the provisions of this Act are to apply accordingly. See the section, *post*.

Reference may also be made to 20 & 21 Vict. c. 31, as to nuisances on town and village greens and allotments for exercise and recreation; and to 34 & 35 Vict. c. 113, and 54 & 55 Vict. c. 76, ss. 2, 48, 49, as to nuisances in the metropolis for want of water.

(m) The penalty here referred to is that which may be enforced by virtue of section 96, *post*, p. 120, to which it might have been more appropriate to append this proviso. Apparently the case must be brought before the court on an information, and the court are not to impose a penalty if they be satisfied as herein mentioned. If, however, the local authority are assured that such will be the result, they will be justified in abstaining from proceedings which will be unavailing.

(n) This points to the injury outside of the premises.

(o) There is here a material alteration of the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 45, and the law is much simplified. The information must, however, be laid, and the court must be satisfied, and if so satisfied must dismiss the complaint. An information was laid against the proprietor of a brewery, for that black smoke was from time to time sent forth from the chimney of his brewery in such quantities as to be a nuisance, and the justices convicted. It was held on a case stated that the second proviso in the text applied only to the first part of sub-section 7, and not to the second part, making it an offence to send forth black smoke in such a quantity as to be a nuisance, and that the defendant was not entitled to call evidence as to the construction of the furnace. *Weekes v. King*, 53 L. T. (N.S.) 51; 49 J. P. 709. An attempt was made to question this decision in *Ex parte Schofield* [1891], 2 Q. B. 428; 60 L. J. M. C. 157; 64 L. T. (N.S.) 780; 39 W. R. 580; 56 J. P. 4; 17 Cox C. C. 303; 7 T. L. R. 615, but the High Court, on a motion for a rule to a magistrate to state a case, held that they were bound by *Weekes v. King*, and the Court of Appeal held that the matter being criminal, no appeal lay from that decision.

A local Act incorporated the smoke provisions of 10 & 11 Vict. c. 34 (The Towns Improvement Clauses Act, 1847), but contained a similar power to that in the text of remission of the penalties. Where a magistrate found that the only mode by which the emission of smoke complained of could be diminished would render it impossible

for the defendant to carry on his business with the furnace he used, which was proved to be properly constructed, the Court of Exchequer held that he had consumed his smoke *as far as possible*, and was entitled to a remission. These words are not to be construed absolutely, but as signifying "as far as possible, consistent with the carrying on of the trade for which the furnace is used." *Cooper v. Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. (N.S.) 539; 15 W. R. 450; 31 J. P. 135. And see the cases mentioned in note (k), *supra*.

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92. It shall be the duty(a) of every local authority to cause to be made from time to time inspection of their district,(b) with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act(c) in force within their district requiring fireplaces and furnaces to consume their own smoke.

Duty of local
authority to
inspect district
for detection of
nuisances.

(a) If this duty be neglected, the local authority may be in default, and may be amenable to proceedings under section 299, *post*. Under section 8 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), a parish council has power to deal with insanitary pools, ditches, and drains, but so as not to interfere with any private right or the sewage or drainage works of any local authority. But nothing in that section is to derogate from any obligation of a district council with respect to the execution of sanitary works.

(b) It will be seen from section 102, *post*, p. 124, how this inspection is to be effected. There is no absolute right, in the first instance, of entry into premises for the purpose of this inspection. If admission be refused an order of justices must be obtained under section 102. Much misapprehension exists in the minds of some medical officers of health and inspectors of nuisances on this point. But a great deal of information can be obtained as to the state of the district without forcible entry into premises.

(c) That is, any local Act. This Act, as appears from the previous section, requires smoke to be consumed, but some local Acts contain special provisions on the subject.

93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority(a) by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

Information
of nuisance
to local
authority.

(a) The statute does not point out how notices are to be given to or served upon the local authority, but generally notices should be in writing and addressed to the local authority under their proper title, and served at their proper office, and be given to the clerk. If the local authority appoint any other officer to receive notices for them, the notice may be delivered to such officer.

94. On the receipt of any information respecting the existence of a nuisance the local authority shall,(a) if satisfied of the existence of a nuisance, serve a notice(b) on the person by whose act, default, or sufferance the nuisance arises or continues,(c) or, if such person cannot be found, on the owner(d) or occupier of the premises on which the nuisance arises, requiring him to abate the same(e) within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose:(f) Provided—

Local authority
to serve
notice re-
quiring abate-
ment of
nuisance.

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:(g)

Section 94. Secondly. That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further(h) order.

(a) This word is imperative, and creates a duty to be discharged by the local authority. As to the enforcing of this duty, see section 299, *post*.

(b) See the forms of this notice in Schedule IV., Form A.; and as to the authentication and service of such notice, see sections 266, 267, *post*. Observe that the notice must be given by the local authority, or at least by their direction; it cannot be given by an officer. See *Saint Leonard's, Shoreditch (Vestry of), v. Holmes*, 50 J. P. 132.

The owner or occupier is not to be served as such if the person by whose act, default, or sufferance the nuisance arises can be found. But it is not always easy to decide as between owner and occupier which of them should be treated as liable for the nuisance as the person by whose act, default, or sufferance the nuisance has arisen. The following cases may be referred to as indicating the principles which should be followed in deciding the question. If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term. He is also liable if he lets a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur for the want of such care on the part of the tenant. If a party buy a reversion during the tenancy, and the tenant afterwards, during his term, erect a nuisance, the reversioner is not liable for it; but if such reversioner re-let, allowing the nuisance to continue, he is liable for such continuance. And such purchaser is liable to be indicted for the continuance of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest or abating the nuisance. *R. v. Pedley*, 1 A. & E. 822; 3 L. J. M. C. 119. See also *Todd v. Flight*, 9 C. B. (N.S.) 377; 30 L. J. C. P. 21. From this decision it would seem to follow that when an owner or reversioner would be liable to be indicted for a nuisance, and is, therefore, to be regarded as the person by whose act, default, or sufferance the nuisance arises or continues, the local authority may proceed against him under this part of the section. But, of course, it does not follow that the tenant may not also be a person by whose act, &c., the nuisance arises. Thus, in *Russell v. Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449, it was held that the occupier and not the owner was *prima facie* liable for damages for a nuisance consisting of defective drains; and the principle thus laid down appears to be of general application, although the proviso in the latter part of this section might possibly apply to the case of drains defective in point of construction. See also per PARKE, B., in *Chauntler v. Robinson*, 4 Exch., at p. 169. And it has been held that if the lessee of property proceeding by the license of the lessor performs acts which amount to a nuisance, both of them are liable at law and in equity. *White v. Jameson*, L. R. Eq. 303; 22 W. R. 761; 38 J. P. 694. In *Broder v. Saillard*, 2 Ch. D. 692; 45 L. J. Ch. 414; 24 W. R. 456, it was held that the occupier of a house is liable for allowing the continuance on his premises of any artificial work which causes an injury to a neighbour, even though it has been put there before he took possession. *Broder v. Saillard* was followed in *Reinhardt v. Mentast*, 42 Ch. D. 685; 58 L. J. Ch. 787; 61 L. T. (N.S.) 328; 38 W. R. 10; 5 T. L. R. 709. And see *Tarry v. Ashton*, 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. (N.S.) 97; 24 W. R. 581; 40 J. P. 439; *Silverton v. Marriott*, 59 L. T. (N.S.) 61; 52 J. P. 677. In *Gandy v. Jubber*, 5 B. & S. 78; 9 B. & S. 15, the tenancy was from year to year, and the Court of Queen's Bench held that the landlord might have re-entered at the end of each year, and that he was, therefore, liable for the consequences resulting from an accident caused by a grating in front of the house having been for some years in a defective state. In the Exchequer Chamber this decision was overruled on the ground that it proceeded on a misapprehension of the peculiar relations existing between the landlord and tenant in the case of a tenancy from year to year. Such a tenancy requires something to be done between the landlord and tenant in order to determine the tenancy. The same principle applies to a weekly tenancy. See *Bowen v. Anderson* [1894], 1 Q. B. 164; 42 W. R. 236; 58 J. P. 213; 10 R. 47, disapproving of a

contrary decision in *Sandford v. Clarke*, 21 Q. B. D. 398 ; 57 L. J. Q. B. 507 ; 59 L. T. (N.S.) 226 ; 37 W. R. 28 ; 52 J. P. 773. And see *Winter v. Baker*, 3 T. L. R. 569. A dictum of LITTLEDALE, J., in *Reg. v. Pedley*, to the effect that if a reversioner allows a nuisance to continue after he might have determined the tenancy he is liable, appears to be overruled by *Gandy v. Jubber*. See also on this point, *Reg. v. Barrett*, 32 L. J. M. C. 36 ; *Reg. v. Stannard*, 33 L. J. M. C. 61 ; 28 J. P. 30. When the nuisance consists of the dangerous condition of the premises demised to the tenant, and the tenant is liable to repair under a covenant, the landlord is not liable in respect of the nuisance, unless he has done some act authorising the continuance of the dangerous state of the premises. *Pretty v. Bickmore*, L. R. 8 C. P. 401 ; 28 L. T. (N.S.) 704 ; 21 W. R. 733 ; 37 J. P. 552. And see *Nelson v. Liverpool Brewery Company*, 2 C. P. D. 311 ; 46 L. J. C. P. 675 ; 25 W. R. 877. This rule applies even when the dangerous condition of the premises existed at the time of the demise, the lessee occupying under an obligation to repair. *Gwynnell v. Eamer*, L. R. 10 C. P. 658 ; 32 L. T. (N.S.) 835. A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by means of blasting, and A. authorised the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against both A. and B. On demurrer by A., held that he, the landlord, was liable, although the nuisance was actually created by the act of his tenant, for the terms of the demise were an authority from him to B. to create the nuisance, which was, therefore, the necessary consequence of the mode of occupation contemplated in the demise. *Harris v. James and Another*, 45 L. J. Q. B. 545 ; 35 L. T. (N.S.) 240. The court characterised the previous case of *Rich v. Basterfield*, 4 C. B. 783 ; 16 L. J. C. P. 273, as one of excessive refinement. There A., the owner of a house with a fireplace and chimney, demised it to a tenant from week to week. The tenant lighted fires, and from the position of the chimney the emission of the smoke was a nuisance to B., the owner of the adjoining house. More than one week elapsed, during which A. did not determine the tenancy. In an action by B. against A. it was held that A. was not liable, as the tenant might by burning coke, or by abstaining to light fires, or in some similar way, have used the premises without creating a nuisance. The owner is, of course, liable for the existence of a nuisance consisting of or arising out of the non-repair of premises when he has taken upon himself the duty of repairing (*Leslie v. Pounds*, 4 Taunt. 649 ; *Payne v. Rogers*, 2 H. Bla. 350) ; or where the lessee is bound by his agreement to do the act which leads to the damage or matter of complaint. *Burt v. Victoria Graving Dock Company, Limited*, 47 L. T. (N.S.) 373, for in this case the lessee resembles an agent of the lessor for the purpose of such act.

It is submitted that in general the occupier and not the owner is the person by whose act, default, or sufferance a nuisance consisting of overcrowding arises ; and it has been so decided in Scotland. See *Home v. Kelso Local Authority*, 3 Coup. 239. And see *Reg. v. Mead* ; *Ex parte Gates*, *infra*.

The foregoing remarks apply only with reference to the question, who is the person to whom notice under this section should or may be given ? They do not affect any question of liability as between landlord and tenant ; as to which see section 104, *post*, p. 125.

Where sheep were penned in pens fixed by the owner of a market on the highway of the market, and tolls were received by him for the same, it was held that the droppings of the sheep left therein constituted a recurring nuisance which arose from the default, permission, or sufferance of the owner of the market, for which he was liable. *Draper v. Sperring*, 10 C. B. (N.S.) 113 ; 30 L. J. M. C. 225 ; 4 L. T. (N.S.) 365 ; 25 J. P. 566.

But a lord of a manor was held not to be liable in respect of a filthy pond on a common in the manor. *Richmond Union v. Dean and Chapter of St. Paul's*, 18 L. T. (N.S.) 522 ; 32 J. P. 374.

B. drained his premises into a barrel drain, which also received the sewage of other premises. This drain passed for about 300 yards under a turnpike road, and thence the sewage was conveyed by an open drain through certain land not belonging to B., and ultimately into an open drain about half a mile from B.'s premises, by the side of a road on land not B.'s. This open drain was a nuisance, the matter from B.'s premises in itself being sufficient to cause a nuisance. On complaint the justices ordered B. to abate the nuisance by cutting off all communication from his premises to the barrel drain. F. was the owner of six houses let to tenants. He had con-

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Section 94.**

structed a drain from the houses under land not his own by leave of the owner, by which the sewage was conveyed into and along a watercourse, and the accumulation at the mouth of the drain was a nuisance. On complaint the justices ordered F. to abate the nuisance :—Held, that the orders were rightly made on B. and F., for that they were the persons by whose act respectively the nuisances arose. In proceedings under the Act, the question whether or not the persons against whom the proceedings are taken have a legal right to cause their sewage to flow in the given channel, &c., is immaterial. *Brown v. Bussell*; *Francombe v. Freeman*, L. R. 3 Q. B. 251; 37 L. J. M. C. 65; 18 L. T. (N.S.) 19; 16 W. R. 511; 9 B. & S. 1; 32 J. P. 196. See now as to such a nuisance the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 17, *post*.

A harbour company were held to be the person through whose default a nuisance from accumulation from seaweed in the harbour arose or continued. *Margate Pier and Harbour (Proprietors of) v. Margate (Town Council of)*, 20 L. T. (N.S.) 564; 33 J. P. 437.

Where there was a flow of sewage from several houses without appreciable damage from each, but the accumulation caused a nuisance on other properties, the occupiers of each of the houses were held to be liable. *Hendon Union v. Bowles*, 20 L. T. (N.S.) 609; 16 W. R. 510; 34 J. P. 19. This decision appears to answer a query left undecided in *Brown v. Bussell*, *supra*. And see *Lambton v. Mellish* [1894], 3 Ch. 163; 63 L. J. Ch. 929; 71 L. T. (N.S.) 385; 43 W. R. 5; 58 J. P. 835; 8 R. 807; 10 T. L. R. 601.

As to the liability of the occupier of a factory or other works for a nuisance arising out of smoke, though the same may be caused by his workmen, see the cases mentioned in note (k) to section 91, *ante*, p. 112.

The appellant rented land of the owner of houses and other land in the neighbourhood. The landowner, without the appellant's consent, made a sewer under the land he occupied. Pecuniary compensation was claimed at the time, but for two years the sewage of several houses passed through the sewer; the appellant, being unable to get satisfaction from his landlord, at length stopped up the sewer, and the local board obtained a conviction against him under the above section and section 96 of this Act, although no nuisance existed on his land :—Held, on a case stated, that the appellant was a person by whose act the nuisance arose or continued, and that he was rightly convicted. *Riddell v. Spear*, 40 L. T. (N.S.) 130; 43 J. P. 317.

The drainage from a gaol in the township of W., which is outside the borough of L., built there by the corporation of L., and duly declared to be the common gaol of the borough, was carried thence by open drains over land in the township of B. not belonging to the corporation, and caused a nuisance in B. The corporation of L. were thereupon summoned by the nuisance removal committee of B. under 18 & 19 Vict. c. 121. It was held that the corporation of L. and not the justices having the management of the gaol were the proper persons to be summoned, and ordered to do what was necessary under that Act. *Ex parte Mayor, &c., of Liverpool*, 27 L. J. M. C. 89; 22 J. P. 562.

When a nuisance is caused by sewage works belonging to a local authority, the local authority cannot be proceeded against under this part of the Act as the person by whose act, default, or sufferance the nuisance arises. *Reg. v. Parlby*, 22 Q. B. D. 520; 58 L. J. M. C. 49; 60 L. T. (N.S.) 422; 37 W. R. 335; 53 J. P. 327; 5 L. T. R. 257.

In cases of defective drains a question often arises whether the drain complained of is a drain or a sewer as defined by section 4. In the latter case the liability is not on the person on whose premises the defect is. See the notes to section 4, *ante*, p. 18, and section 23, *ante*, p. 54. See also *Fordom or Wycombe Union v. Parsons* [1894] 2 Q. B. 780; 64 L. J. M. C. 22; 71 L. T. (N.S.) 428; 58 J. P. 765; 10 R. 426.

(d) See the definition in section 4, *ante*, p. 6. Note that it is only when the person cannot be found by whose act, &c., the nuisance arises, that the notice may be served on the owner or occupier as such. The local authority may serve either, subject to the provisos in the latter part of the section. Where the person causing the nuisance cannot be found, the liability of the owner of premises to abate it only arises where it is shown that it continues by his act, default, or sufferance. *Thames (Conservators of the River) v. London (Port Sanitary Authority of)* [1894], 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. (N.S.) 803; 58 J. P. 335; 10 T. L. R. 161.

Where a chapel was used as a shelter for destitute persons and orders as to the number of persons to be admitted were given by the superintendent of the philanthropic work of the religious association owning the chapel to the caretaker apparently on his own responsibility :—Held, that the superintendent was the person by whose

act, default, or sufferance a nuisance consisting in the overcrowding of the chapel at night arose. *Reg. v. Mead, Ex parte Gates*, 59 J. P. 150 ; 11 T. L. R. 204, 242.

In determining upon whom the notice should be served, the local authority may have to consider whether it is in the power of the person served to comply with it. Thus, if a nuisance exists on the land of A. which has been caused by B., B. has no power to enter on A.'s land to abate the nuisance, and it was held that he cannot be ordered to do so. *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*, 1 Ex. D. 344 ; 34 L. T. (N.S.) 608 ; 40 J. P. 726. This case was followed in *Reg. v. Trimble*, 36 L. T. (N.S.) 608 ; 41 J. P. 455, where it was suggested by COCKBURN, C.J., that the order should be made on the owner of the premises where the nuisance exists. But the authority of these cases is seriously shaken by *Parker v. Inge*, 17 Q. B. D. 584 ; 55 L. J. M. C. 149 ; 55 L. T. (N.S.) 300 ; 51 J. P. 20. In that case a local authority served the owner of premises with a notice, under section 94 of the Public Health Act, 1875, requiring him within seven days to abate a nuisance arising from the defective construction of a structural convenience, and for that purpose to execute certain specified works. Having failed to comply with the notice, the owner was summoned under section 95 before a court of summary jurisdiction, and on the hearing it was proved that the premises in question were occupied by a tenant of the owner under a lease for twenty-one years, containing the usual covenants :—Held, that the owner, even although he could not enter upon the premises and execute the works without the tenant's permission, had made default in complying with the requisitions of the notice within the meaning of section 95, and, therefore, that the justices had jurisdiction to make an order under section 96, requiring him to abate the nuisance. The decision in *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority* has, however, been followed in a recent Irish case. *Letterkenny Commissioners v. Collins*, 28 L. R. Ir. 235.

(e) The abatement of the nuisance may possibly involve the pulling down of the premises where the nuisance consisted of overcrowding, and the premises are unfit for human habitation. See *Brown v. Biggleswade*, cited at 43 J. P. 554.

(f) A notice requiring the abatement of the nuisance forthwith after service thereof, sufficiently specifies the time within which the nuisance must be abated. *Thomas v. Western Steam Trawling Company*, 59 J. P. 232. The local authority must specify in the notice the works which they require to be done. See *Reg. v. Wheatley*, 16 Q. B. D. 34 ; 55 L. J. M. C. 11 ; 34 W. R. 257 ; 50 J. P. 424 ; and the cases cited in the notes to section 96, *post*.

(g) See *Cook v. Montague*, *ante*, p. 7. The owner as distinguished from the occupier is to make good in all cases a nuisance which arises from structural deficiencies or defective construction. The occupier is not liable for such default under this statute, whatever may be his responsibilities under the contract with his landlord. Such responsibilities are not affected by the Act. See section 104, *post*.

But where notice was served on the occupier, and in the course of the work to abate the nuisance it was found that it was caused by a structural defect, it was held that the occupier could recover the expenses from the owner. *Gebhardt v. Saunders* [1892], 2 Q. B. 452 ; 67 L. T. (N.S.) 684 ; 56 J. P. 741 ; 40 W. R. 571.

(h) This word should have been omitted. In the cases contemplated there has not been any order. See as to this proviso note (d), *supra*.

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority likely to recur (a) on the same premises, the local authority shall (b) cause a complaint (c) relating to such nuisance to be made before a justice, (d) and such justice shall thereupon issue a summons (e) requiring the person on whom the notice was served to appear before a court of summary jurisdiction. (f)

On non-compliance with notice complaint to be made to justice.

(a) See *Draper v. Sperring*, *ante*, p. 117. See also note (a) to the next section.

(b) These words are imperative, and the neglect of the local authority will be a default ; as to which see section 299, *post*.

(c) It does not appear that this complaint must be in writing. See 11 & 12 Vict. c. 43, s. 8. As to the limitation of time, see section 252, *post*. The time will, of course, run from the default in the first case to which the section applies, but it

Note to Section 95. is not so clear when the matter of complaint arises in the second. It will be safer that the complaint should be in writing, so as to prevent any dispute in the future by the person in alleged default as to the particular matter complained of.

(d) See as to his competency, section 258, and the notes thereon.

(e) See the form of the summons in the Schedule IV., Form B.

(f) See the definition in section 4, *ante*, p. 22.

Power of court of summary jurisdiction to make order dealing with nuisance.

96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur(*a*) on the same premises, the court shall(*b*) make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose ;(*c*) or an order prohibiting the recurrence of the nuisance, and directing the execution of any works necessary to prevent the recurrence ;(*d*) or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made,(*e*) and shall also give directions(*f*) as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance.(*g*)

(*a*) By this section it is provided that after the summons mentioned in the last section the court may make an order as provided by the section. In *Barnes v. Ackroyd*, *ante*, p. 112, BLACKBURN, J., said that the justices had stopped too soon in their investigation, for after first ascertaining whether a nuisance had been proved to exist they should have proceeded further to inquire if such nuisance were likely to recur.

(*b*) This is imperative upon the court ; still, if the party before the court undertakes to abate the nuisance, it is presumed that the court may adjourn the case to abide the result of the undertaking.

As to the appearance of the local authority in court, see section 259, *post*.

(*c*) The form of order is given in Sched. IV., Form C., *post*. With reference to the specification in the order of the works required to be done, the following cases have been decided. In *Ex parte Whitchurch*, 6 Q. B. D. 545 ; 50 L. J. M. C. 41, 99 ; 29 W. R. 507 ; 45 J. P. 392, a privy and ashpit were a nuisance, and a notice had been given to abate it, and for that purpose to fill up the ashpit, abandon the privy, and build a pail closet. On default the justices made an order under this section in the terms of the notice. The court quashed the order on the ground that under the section the owner could not be compelled to put up a particular kind of closet. STEPHEN, J., said that the question turned upon the word *necessary*, which could not be extended to mean what the local authority thought necessary. But in *Ex parte Saunders*, 11 Q. B. D. 191 ; 52 L. J. M. C. 89 ; 47 J. P. 404, a watercloset in the centre of a house being a nuisance, the sanitary authority gave notice to the owner under section 94 to abate the nuisance, and for that purpose to remove the said closet from the centre of the house, and place it near an outer wall, where there might be efficient ventilation, and to fix the soil pipe outside the wall. The owner having made default, an order was made under this section to do the things specified. It was held that the justices had jurisdiction to make the order. The court (CAVE and A. L. SMITH, JJ.) intimated that *Ex parte Whitchurch* was distinguishable, on the ground that the order was not for the erection of a particular kind of closet where none existed before, but for the removal of a closet to a place where it would not be a nuisance. In *Reg. v. Llewellyn*, 13 Q. B. D. 681 ; 33 W. R. 150 ; 49 J. P. 151, a privy openly discharged night soil and offensive matter on the bank of a river. The sanitary authority served the owner of the premises with notice to abate the nuisance, and for that purpose to "remove the present pipes and pan, level the floor under the seat of the privy, and provide a galvanised double-handled pail under the seat, the cover of the said seat to be movable, so that the premises should no longer be a nuisance or injurious to health." The justices made an order in the terms of the notice, and it was held they had jurisdiction to make the order. The court adopted the decision in *Ex parte Saunders*, saying that if it differed from *Ex parte Whitchurch*

they differed also. After this decision it was clear that the cases were in conflict, and accordingly when the point again arose in *Reg. v. Kent JJ.*, 1 T. L. R. 539, the court (HAWKINS and SMITH, JJ.) ordered it to be argued before three judges. The case was eventually decided by FIELD, MANISTY, and WILLS, JJ. It appeared that an order had been made requiring the appellant, *inter alia*, to lay down a six-inch glazed stoneware drain pipe, and to connect it with the main sewer in front of his house. It was held that there was jurisdiction to make the order, and the court overruled *Ex parte Whitchurch*. *Reg. v. Kent JJ.*, 49 J. P. 404; 55 L. J. M. C. 9. In *Whitaker v. Derby Urban Sanitary Authority*, 55 L. J. M. C. 8, the respondents had served on the owner of houses to which were attached privies and ashpits, which were a nuisance, a notice requiring him to abate the nuisance, and "for that purpose to deodorise and fill in the privies, privy vaults and ashpits, convert the same to proper pan waterclosets, and connect them with the main sewer." This notice was not complied with, and an order was thereupon made by justices in the terms of the notice. It was held that the order was good, as the above section left it absolutely to the justices to order any works or structural alterations which they in their discretion might think necessary for the abatement of the nuisance. Finally, in *Reg. v. Wheatley*, 16 Q. B. D. 34; 55 L. J. M. C. 11; 34 W. R. 257; 50 J. P. 424, where an order of justices required the owner of premises to abate a nuisance arising from untrapped drains, and "to execute such works and do such things as may be necessary for that purpose, so that the same shall no longer be a nuisance or injurious to health," it was held that the order was bad, because it did not specify what works and things the owner should execute and do for the purpose of abating the nuisance. It may be mentioned here that the order made under this section is an order made in a criminal cause or matter within the meaning of the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47, and that when the Queen's Bench Division has granted a *certiorari* to quash the order, an appeal will not lie to the Court of Appeal. *Reg. v. Whitchurch*, 7 Q. B. D. 534; 50 L. J. M. C. 99; 45 J. P. 617.

In another case, upon a complaint made for having a chimney in a factory for sending forth black smoke, so as to be a nuisance within section 91, sub-section (7), the magistrate convicted, and refused to state a case. The High Court, having refused to grant a rule to the magistrate to state a case, it was held that the proceedings were criminal, and that no appeal lay to the Court of Appeal. *Ex parte Schofield* [1891], 2 Q. B. 428; 60 L. J. M. C. 157; 64 L. T. (N.S.) 780; 39 W. R. 580; 56 J. P. 4; 17 Cox C. C. 303; 7 T. L. R. 615.

(d) Black smoke having issued from a chimney in such quantities as to be a nuisance, an order of abatement was made. Subsequently, black smoke having again issued from the chimney, an order was made on complaint of the respondents prohibiting the recurrence of the nuisance. Two informations having been laid, one in respect of each order, but both founded on the same act of emission of black smoke:—Held, that the act complained of being the same in each case, there could not be two convictions in respect of it. *Eddleston v. Barnes*, 1 Ex. D. 67; 45 L. J. M. C. 73; 34 L. T. (N.S.) 497; 40 J. P. 88. The order of justices under 18 & 19 Vict. c. 121, s. 13, was without appeal to the quarter sessions. See *Ex parte Corporation of Liverpool*, 8 E. & B. 537; 4 Jur. (N.S.) 333; 27 L. J. M. C. 89; 22 J. P. 562; but now section 269, *post*, allows of an appeal to the sessions, and section 99, *post*, suspends proceedings in that event. The order may be good as to the prohibition, though bad as to the abatement. See *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*, *ante*, p. 119.

(e) It is to be noticed that the form in the schedule does not provide for this penalty. The provision is new, and the imposition of the penalty is discretionary with the court.

(f) It is presumed that this must be by an order, but the form in the schedule does not provide for these costs.

(g) It is not quite clear what this penalty is for, whether for the previous nuisance or for disobedience of the notice of the local authority. It cannot be for disobedience of the justices' order, for that was not then made. It seems, however, that if the two sections, 95 and 96, be read together, the penalty is for non-compliance with the notice, inasmuch as complaint cannot be made to the justices until the person served with notice is in *default*.

97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the Order of prohibition in case of house

Section 97. court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose ; and on the court (a) being satisfied that it has been rendered fit (b) for that purpose, the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

(a) By the use of this word the difficulty in 18 & 19 Vict. c. 121, s. 13, is avoided. It is not now necessary that there should be the same justices for all these orders. The statute does not point out any process to be applied in these proceedings. It is presumed that application is to be made to the court, but previous notice should be sent to the local authority.

(b) See the provisions in section 157, *post*, as to the bye-law regarding houses unfit for human habitation. That bye-law is restricted to houses erected within the period specified, but the above section applies to ancient as well as modern houses.

See also the provisions of the Housing of the Working Classes Act, 1890, *post*, which contains provisions for the closing of premises if they are in a state so dangerous or injurious to health as to be unfit for human habitation.

Penalty for
contravention
of order of
court.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default ; (a) and any person knowingly and wilfully acting contrary to an order of prohibition, shall be liable to a penalty not exceeding twenty shillings per day during such contrary action ; moreover, the local authority may (b) enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a summary manner (c) the expenses incurred by them from the person on whom the order is made.

(a) Upon an information against the appellant for a nuisance through a chimney sending forth black smoke, an order was made on the 20th July, 1868, that within two months he should make such alterations in the said chimney so as to consume the smoke arising therefrom. The appellant thereupon made certain alterations, and the smoke ceased to issue until the 4th of the following February, when for a certain limited period on that day and the following days it again issued. In the following July an information was laid for disobedience of the order. No evidence was given as to the cause of the issuing of the smoke, and the justices convicted the appellant :—Held, first, that there was evidence justifying the conviction ; and, secondly, that as the nuisance was a continuing one, 11 & 12 Vict. c. 43, s. 11, did not apply. *Higgins v. Norwich Union*, 22 L. T. (N.S.) 752 ; 34 J. P. 806.

When an order was persistently disregarded, nineteen separate informations were laid, and the same number of summonses issued in respect of as many acts of disobedience, each committed on a different day, by sending forth black smoke. At the hearing, the full penalty of 10s. was imposed for the offence alleged in each summons, and the offenders were also ordered to pay 15s. costs on the first summons, and 16s. costs upon every other. They objected that their disobedience was but one default, and that the divers acts complained of should have been charged in a single summons, to which only one set of costs would have attached ; and they obtained a rule calling on the justices to state a case under 20 & 21 Vict. c. 43 :—Held, that each daily emission of smoke was a separate act of disobedience, for which a separate summons might be lawfully issued, and that under the circumstances the justices had not so exercised their discretion in awarding costs as to render the interference of the court necessary. *Reg. v. Waterhouse*, L. R. 7 Q. B. 545 ; 41 L. J. M. C. 115 ; 26 L. T. (N.S.) 761 ; 20 W. R. 712 ; 36 J. P. 471.

A summons must be issued to the defendant before this penalty can be enforced. *Reg. v. Jenkins*, 32 L. J. M. C. 1 ; 3 B. & S. 116 ; 7 L. T. (N.S.) 272 ; 11 W. R. 20 ; 26 J. P. 775.

It will seem from *Parker v. Inge*, *ante*, p. 119, that an owner ordered to abate a

nuisance would not be liable to a penalty if he proved that he had no power to enter upon the lands where the nuisance was, and had been refused admission. See, however, *Letterkenny Commissioners v. Collins*, referred to on the same page.

**Note to
Section 98.**

Justices made an order on P. to cleanse a drain; P. did not obey the order and the local board refused to take any steps to enforce it:—Held, that the party aggrieved was not entitled to a *mandamus* to the local board to compel them to abate the nuisance under the corresponding provisions of the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), s. 14. *Ex parte Bassett*; *In re Local Board of West Ham*, 7 E. & B. 280; 26 L. J. M. C. 64; 28 L. T. (o.s.) 267; 3 Jur. (n.s.) 136; 21 J. P. 85. This case was decided, however, before the passing of the Sanitary Act, 1866, section 49 of which appears in this Act as section 299, and provides for default by a sanitary authority in enforcing the provisions of this Act. And see also 48 & 49 Vict. c. 72, s. 7, *post*, which provides that it shall be the duty of every local authority to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to procure the proper sanitary condition of all premises within the area under their control

(b) This clause of itself gives a right of entry to the local authority.

When an order was made under the corresponding provisions of 18 & 19 Vict. c. 121, upon the owner to abate the nuisance, and, in his default, upon the local authority, it was held that he was liable to the penalty upon his default, though the local authority failed to act under the order. *Tomlins v. Nuisance Removal Company of Great Stanmore*, 12 L. T. (n.s.) 118; 29 J. P. 117.

(c) See section 251, *post*, and note (e) to section 21, *ante*, p. 53.

99. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act, (a) no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted. (b)

Appeal
against
order.

(a) See sections 268, 269, *post*.

(b) It will be somewhat difficult in many cases to determine when this time has arrived.

100. Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court may be addressed to and executed by the local authority.

In certain
cases order
may be
addressed
to local
authority.

See the form of the order in Schedule IV., Form D., *post*.

The proviso at the end of section 94, *ante*, p. 116, applied only where the person causing the nuisance could not be found, and it was clear that the owner and occupier were not responsible. In that case no order was necessary. But when neither the person causing the nuisance, nor the owner nor the occupier can be found, then an order may be made on the authority under this section. It would appear that this order can only be made when the complaint is laid by an individual aggrieved under section 105, for, in the absence of the person causing the nuisance and the owner and occupier, there would be no person against whom the local authority could lodge a complaint under the previous sections.

101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power to
sell manure,
&c.

See also section 49, *ante*, p. 75, where, however, a sale by public auction is not required. Sale by auction can hardly be necessary in most of these cases. It is to

Note to Section 101. be noticed that this section applies only to matters or things removed by the local authority in abating a nuisance.

Power of entry of local authority.

102. The local authority, or any of their officers, shall^(a) be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act^(b) in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon; or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made,^(c) the local authority or any of their officers shall^(d) be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall^(e) be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.^(f)

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath^(g) by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given^(h) to the person having custody of the premises) may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justices shall, on oath^(g) made before him of that fact, by order under his hand authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

^(a) The section is very wide in reference to the officers, and no particular officer is referred to, but as none can enter *compulsorily*, as of right, against the will of the occupier, without an order of justices, this point will be cleared up by such order. The local authority being a corporate body cannot enter of themselves; they should, therefore, depute this function to the inspector of nuisances, and perhaps to the medical officer of health.

^(b) Reference is here made to the local Acts, which in many instances contain this provision.

^(c) Under section 96, *ante*, p. 120.

^(d) See note ^(a).

^(e) The previous paragraph relates to the mere inspection; this to the action of the local authority under the order. See further sections 105, 106, *post*.

^(f) By 52 & 53 Vict. c. 63, s. 3, it is provided that in all Acts of Parliament passed after the year 1850, the expression "oath" shall in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration. As to the person entitled to affirm and the circumstances under which they may do so, see the Oaths Act, 1888 (51 & 52 Vict. c. 46), and *Reg. v. Moore*, 60 L. J. M. C. 80; 66 L. T. (N.S.) 125; 40 W. R. 304; 56 J. P. 345; 17 Cox C. C. 458; 8 T. L. R. 287. *Nash v. Nawab Mahmood Ali Khan*, "The Times," 18th March, 1892.

(g) These words seem to imply personal delivery to the custodian of the premises. There is no provision in respect of empty or unoccupied premises, because there can be no refusal of admission. It is by no means clear whether admission can be forced in respect of such premises, and yet the necessity of the case may often require it.

**Note to
Section 102.**

103. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds. Penalty for disobedience of order.

See section 251, *post*, as to the recovery of such penalty.

104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made ;(a) or if the order is made on the local authority, or if no order is made, but the nuisance is proved(b) to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused ; and in case of nuisances caused by the act or default of the owner(c) of premises, such costs and expenses may be recovered from any person who is for the time being owner(e) of such premises : Provided that such costs and expenses shall not exceed in the whole one year's rackrent(d) of the premises. Costs and expenses of execution of provisions relating to nuisances.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner,(e) or in any county(f) or superior court ; and the court shall have power to divide costs, expenses, and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just.(g)

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises ;(h) and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent :

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand(i) of such costs or expenses from such occupier, and after notice(k) not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier :

Provided also, that nothing herein contained shall affect any contract between any owner or (sic) occupier of any house, building, or other property, whereby it is or may be agreed that the occupier shall pay or discharge all rates, dues and sums of money payable in respect of such

Section 104. house, building, or other property, or to affect any contract whatsoever between landlord and tenant. *(l)*

(a) As in fact the local authority will have paid the money, such authority will apparently be the proper plaintiffs.

(b) This proof must be given in the action or in the summary proceedings.

(c) See the definition in section 4, *ante*, p. 6. The words "for the time being the owner," seem to have been inserted in order to avoid the effect of the decision in *Blything Union (Guardians of) v. Warton*, 32 L. J. M. C. 132; 3 B. & S. 352; 7 L. T. (N.S.) 672; 11 W. R. 306; 27 J. P. 87, which was decided with reference to 18 & 19 Vict. c. 121, s. 19.

(d) See the definition in section 4, *ante*, p. 11.

(e) See section 251, *post*. It is to be observed that if the money is sought to be recovered summarily, it will be a civil debt within the meaning of the Summary Jurisdiction Act, 1879, ss. 6, 35.

(f) See also section 261, *post*. It was held upon the corresponding provisions of 11 & 12 Vict. c. 123, s. 3, that whatever may have been the amount of the costs, and although a question of title to the land on which the nuisance existed arose, the county court had jurisdiction by the express terms of the Act. *Reg. v. Harden*, 2 E. & B. 188; 17 Jur. 804; 22 L. J. Q. B. 299; 2 W. R. 164; 22 L. T. (o.s.) 228; *Hertford Union (Guardians of) v. Kimpton*, 11 Ex. 295; 25 L. J. M. C. 41; 25 L. T. (o.s.) 185; 3 W. R. 521; 19 J. P. 678. But that Act provided for the recovery of the costs and expenses in any county court, or before two justices. No reference was made to a superior court as in the text, and it is submitted that while there is a remedy provided by the above section for the recovery of costs, &c., to any amount, in a summary manner, the county court can only be resorted to when the amount sought to be recovered is within its jurisdiction.

(g) Apparently this must be done at the risk of the complainants, for if the costs and expenses be divided, some of the defendants may be unable to pay their shares, and there would then, as it seems, be no recourse to the others. Hence the complainants should be heard before the order is made in this form.

(h) In *Bermondsey (Vestry of) v. Ramsay*, L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. (N.S.) 429; 19 W. R. 774; 35 J. P. 567, it was held with respect to a similar clause in 25 & 26 Vict. c. 102, s. 36, that an unsatisfied judgment against the owner for a proportion of paving expenses was no bar to an action for the same expenses against the occupier. See also as to proceedings against a subsequent owner. *Plumstead Board of Works v. Ingoldby*, L. R. 8 Ex. 63, 174; 42 L. J. Ex. 50, 136; 29 L. T. (N.S.) 375; 21 W. R. 77, 817; 37 J. P. 759, and the cases cited in the notes to section 257, *post*. The text applies only to costs and expenses which the local authority are entitled to recover from the owner under the preceding sections. Therefore, expenditure by a tenant in abating a structural nuisance pursuant to a magistrate's order after notice to abate served on the tenant only cannot be set off against rent due to the landlord. *Butcher v. Ruth*, 22 L. R. 1r. 380.

(i) The local authority must make this demand and give the notice. As to the authentication and service of such notice, see sections 266, 267, *post*.

(k) On similar words in 25 & 26 Vict. c. 102, s. 96, it was held that in order to entitle an occupier to avail himself of the proviso, the money must have been actually paid, and consequently that a distress for rent which became due after a notice under that section made before payment to the vestry which gave the notice was not illegal. *Ryan v. Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135.

(l) See section 226, *post*, and the notes thereon.

105. Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any local authority by any person aggrieved thereby, *(a)* or by any inhabitant of such district, or by any owner of premises *(b)* within such district, and thereupon the like proceedings *(c)* shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority: *(d)*

Power of individual to complain to justice of nuisance.

Provided that the court may, if it thinks fit, adjourn the hearing **Section 105.**
or further hearing of the summons for an examination of the premises
where the nuisance is alleged to exist, and may authorise(e) the entry
into such premises of any constable or other person for the purposes of
such examination :

Provided also, that the court may authorise any constable or other
person to do all necessary acts for executing an order made under this
section, and to recover the expenses from the person on whom the order
is made in a summary manner.(f)

Any constable or other person authorised under this section shall have
the like powers, and be subject to the like restrictions, as if he were an
officer of the local authority authorised under the provisions of this Act
relating to nuisances to enter any premises and do any Acts thereon.(g)

(a) These words extend the provision of 23 & 24 Vict. c. 77, s. 13, since the
nuisance complained of, which was there limited to *private* premises, is now described
generally, and may exist on any premises. But while the section enables any person
aggrieved by a nuisance to take proceedings for its abatement, yet the effect of the
section is not to impose a statutory duty on the owner of premises to keep them in a
sanitary condition, or so as not to be a nuisance, so as to enable the tenant to counter-
claim damages for breach of such duty in an action for rent. *Hildige v. O'Farrell*,
6 L. R. Ir. 493.

(b) As to who is an *owner*, and what are *premises*, see the definitions in section 4,
ante, p. 6.

(c) By 18 & 19 Vict. c. 121, s. 12, the local authority might cause complaint to be
made of a nuisance, and the justices might order it to be abated. By 23 & 24 Vict.
c. 77, s. 13, on complaint by an inhabitant, a justice might act as in case of a com-
plaint by the local authority as if the person complaining were such authority. By
29 & 30 Vict. c. 90, Part II. (ss. 14—34) of the Act, was to be construed as one with
the above statutes ; and by section 21, the nuisance authority were required previous
to taking proceedings under 18 & 19 Vict. c. 121, s. 12, to serve a notice on the person
by whose acts the nuisance arose, to abate the same within a time specified. It was
held that notice was not necessary before laying a complaint by an inhabitant. *Cocker*
v. Cardwell, L. R. 5 Q. B. 15 ; 39 L. J. M. C. 28 ; 10 B. & S. 797 ; 21 L. T. (N.S.) 457 ;
18 W. R. 212 ; 34 J. P. 516. Per COCKBURN, C.J.: "If the sections had occurred
in the same order in one and the same statute, it clearly could not have been said
that the last section applied to a private individual when all mention of him was
omitted." It would appear, therefore, that an individual need not give notice before
proceeding under this section. A person aggrieved may, under this section, make a
complaint against a local authority as well as against an individual ; but the section
does not give justices jurisdiction to entertain a complaint in respect of a nuisance
caused by sewage works. *Reg. v. Parlbay*, 22 Q. B. D. 520, 526 ; 58 L. J. M. C. 49 ;
60 L. T. (N.S.) 422 ; 37 W. R. 335 ; 53 J. P. 327 ; 5 T. L. R. 257.

(d) These incidents and consequences appear in the previous sections.

(e) This authority must be given by an order of the court. See section 102, *ante*,
p. 124.

(f) See section 251, *post*. It is presumed that the authority to the constable will
be contained in the order.

(g) See section 102, *ante*, p. 124.

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default(a) in doing their duty
in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of
the defaulting authority to institute any proceeding which the defaulting
authority might institute with respect to such nuisances, and such officer
may recover in a summary manner(b) or in any county or superior
court any expenses incurred by him, and not paid by the person pro-
ceeded against, from the defaulting authority :

Power of
officer of
police to pro-
ceed in certain
cases against
nuisances.

Section 106. But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice,^(c) for the purpose of carrying into effect this enactment.

(a) See further, as to this default, section 299, *post*. The authority of the Local Government Board will be given by an instrument under seal. That board will generally be satisfied by the result of correspondence between the several parties, but they may require some of their inspectors to examine into the matter on the spot and report thereon.

(b) See section 251, *post*, and as to the courts referred to, see section 104, note (f), *ante*, p. 126.

(c) See section 102, *ante*, p. 124, and the preceding section.

Local authority may take proceedings in superior court for abatement of nuisances.

107. Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior court of law or equity^(a) to enforce the abatement or prohibition of any nuisance under this Act,^(b) or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purposes of this Act.^(c)

(a) Now in the High Court of Justice. As to the various legal remedies for a nuisance, see section 111, *post*, and the notes thereto. Proceedings under this section for the abatement or prohibition of a public nuisance must be taken in the name of the Attorney-General. *Wallasey Local Board v. Gracey*, 36 Ch. D. 593; 56 L. J. Ch. 739; 57 L. T. (N.S.) 51; 35 W. R. 694; 51 J. P. 740.

(b) It must be noticed that no authority is given to the local authority to institute proceedings in the case of any nuisance not the subject of this Act, and though such authority might prosecute indictments for common law nuisances as any other corporate body, yet there would be a great question whether they could charge the expenses on their rates or funds. But see the judgment of WILLS, J., in *Reg. v. Parlbly*, *ante*, p. 127. Where they can proceed, however, they may act as relators in an action brought by the Attorney-General, and they may themselves maintain an action for damages for a nuisance affecting property of which they are the actual owners. *Attorney-General v. Logan* [1891], 2 Q. B. 100; 65 L. T. (N.S.) 162; 55 J. P. 615; 7 T. L. R. 279.

18 & 19 Vict. c. 121, s. 30, confined this power to nuisances within the area of the jurisdiction of the local authority, but this restriction is removed by the text. And see the next section.

(c) See Part IV., *post*.

Power to proceed where cause of nuisance arises without district.

108. Where a nuisance under this Act^(a) within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district,^(b) the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district,^(c) so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any nuisance within the area of their jurisdiction

caused by an act or default committed or taking place with the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.^(d) Section 108.

(a) Reference is here made to section 91, *ante*, p. 108, and perhaps also to section 114, *post*, p. 134.

(b) This clause removes the difficulty raised by the decision in *Reg. v. Cotton*, 1 E. & E. 203; 28 L. J. M. C. 22; 32 L. T. (o.s.) 125; 7 W. R. 62; 5 Jur. (N.S.) 311; 23 J. P. 532. There certain brewers in the parish of R. poured refuse into a river in that parish, and thereby created a nuisance in a part of the same river in the parish of D., where there was a local authority whose jurisdiction did not include the parish of R. It was held that the local authority could not legally complain, and that the justices could make no order.

(c) See sections 91—103, *ante*, pp. 108—125. See as to the jurisdiction of the justices in detached parts of counties, 11 & 12 Vict. c. 42, s. 7.

(d) The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 14, provides as follows:—“(1) Where a nuisance liable to be dealt with summarily under this Act appears to be wholly or partially caused by some act, default, or sufferance committed or taking place without the district, the inhabitants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorised with the same incidents and consequences as if such act, default, or sufferance were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place. (2) Section 108 of the Public Health Act, 1875, set out in the First Schedule to this Act, shall continue to extend to London, with the substitution of a sanitary authority under this Act, for any nuisance authority mentioned in the said section, and any reference in the section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act.”

The last clause of this section, which defined a “nuisance authority,” was repealed by the Public Health (London) Act, 1891. A list of the sanitary authorities in the metropolis will be found in Macmorran’s edition of the “Public Health (London) Act, 1891,” at p. 166. They are—in the city, the Commissioners of Sewers, and elsewhere the vestries or district boards.

109. Where two convictions against the provisions of any Act relating to the overcrowding of a house^(a) have taken place within a period of three months (whether the persons convicted were or were not the same) a court of summary jurisdiction^(b) may, on the application of the local authority of the district in which the house is situated, direct^(c) the closing of the house for such period as the court may deem necessary. Provision in case of two convictions for overcrowding.

(a) See section 91, *ante*, p. 108.

(b) See the definition in section 4, *ante*, p. 15.

(c) It is not stated how the direction is to be given. But it is presumed that the court must make an order, and for this purpose there must be a proper complaint, and the party complained of must be duly summoned and heard on his defence, unless, indeed, the section means that the court can direct the closing of the house as part of the adjudication on the second information. The words, however, hardly support this construction.

The provision is discretionary upon the court.

110. For the purpose of the provisions of this Act relating to nuisances,^(a) any ship or vessel lying in any river, harbour, or other water within the district of a local authority shall be subject to the Provision as to ships.

Section 110. jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river, harbour, or other water, not within the district of such local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board,^(b) and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge^(c) of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government.

(a) See section 91, *ante*, p. 108. For the provisions as to canal boats used as dwellings, see 40 & 41 Vict. c. 60, in the Appendix. By the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35), *post*, the above section shall have effect, not only for the purpose of the provisions of this Act relating to nuisances, but also for the purpose of such of the provisions of this Act relating to infectious diseases as are referred to in the schedule of the Act of 1885, *i.e.*, the provisions contained in the following sections of this Act—120, 121, 124, 125, 126, 128, 131, 132, and 133.

(b) The Board are to prescribe this by an order, and have done so in several cases. There is some difficulty as to the distance out at sea. It has been considered that three miles from the shore is the proper limit, if indeed the water hereinmentioned applies to the sea, which, it has been contended, should have been mentioned specifically, as it is in section 130, *post*. See the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), which makes foreigners on board foreign ships, passing within three miles of the English coast, subject to the English criminal law.

As to the jurisdiction of a port sanitary authority, see section 288, *post*.

(c) These words are in addition to the terms used in the repealed Act, and prevent the exemption from operating in respect of Government vessels lent to public bodies for special purposes.

Provisions of Act relating to nuisances not to affect other remedies.

111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right, remedy, or proceeding under any other provisions of this Act or under any other Act, or at law or in equity :^(a)

Provided that no person shall be punished^(b) for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment.

(a) See also sections 340 and 341, *post*.

A public or common nuisance is an offence against the public, being either the doing of a thing to the annoyance of all the King's subjects, or the neglecting to do a thing which the common good requires: 1 Hawk. P. C. Ch. 32, s. 4. The usual remedy for a public nuisance is by indictment; it may, however, be by presentment or sometimes by information (3 Burn's Justice 1068); and it is punishable by fine or imprisonment or both. Whenever a special or particular damage is sustained by a private individual from a public nuisance an action for damages is maintainable provided that the damage is direct and substantial. *Addison on Torts*, p. 11; *Soltau v. De Held*, 2 Sim. (N.S.) 145; 21 L. J. Ch. 153; *Benjamin v. Storr*, L. R. 9 C. P. 400; 43 L. J. C. P. 162. An injunction may also be obtained to restrain the continuance of a public nuisance; but the Attorney-General must be a party to the proceedings unless the plaintiff have sustained special damage. *Soltau v. De Held*, *supra*; *Attorney-General v. Shrewsbury Bridge Company*, 51 L. J. Ch. 746; 46 L. T. (N.S.) 687; 30 W. R. 916; and see *Daniell's Chancery Practice*, p. 1483. For a private nuisance the remedy is by an injunction or for damages. "To constitute a public nuisance, the thing must be such as in its nature or in its consequences is a nuisance—an injury or a damage to all persons who come within the sphere of its operation,

although it may be so in a greater degree to some than it is to others. For example, take the case of the operations of a manufactory, in the case of which operations volumes of noxious smoke or of poisonous effluvia are emitted. To all persons who are at all within the reach of those operations, it is more or less a nuisance in the popular sense of the term. It is true that to those who are nearer to it, it may be a greater nuisance, a greater inconvenience than it is to those who are more remote from it; but still, to all who are at all within the reach of it, it is more or less a nuisance or inconvenience." Per KINDERSLEY, V.C., in *Soltan v. De Held*, *supra*.

Note to
Section 111.

(b) Proceedings taken under the previous sections to procure proper privy accommodation or the removal of refuse, would not be considered as punishment. In *Reg. v. Wigg*, Salk. 460, it was held that a statutory provision which enabled swine kept in the streets of London to be seized and sold, did not prevent a party from being indicted for a common nuisance in so keeping them.

OFFENSIVE TRADES.

112. Any person who, after the passing of this Act, (a) establishes within the district of an urban authority, without their consent in writing, (b) any offensive trade; that is to say, the trade of—

Restriction
on estab-
lishment of
offensive
trade in urban
district.

Blood boiler, or

Bone boiler, or

Fellmonger, or

Soap boiler, or

Tallow melter, or

Tripe boiler, or

Any other noxious or offensive trade, business, or manufacture, (c)

shall be liable to a penalty (d) not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty (d) not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

(a) 11 & 12 Vict. c. 63, s. 64, provided for those businesses established since 1848 when that Act was passed, in the same manner as in the text, so that, probably, few of such businesses now exist in those districts without such consent.

(b) This Act does not, as 11 & 12 Vict. c. 63 did, prescribe how the consent should be given. The local authority should pass a resolution, and a copy of this resolution in writing, signed by their clerk, will doubtless be sufficient proof of consent.

(c) The offence would be committed by the establishment of the business, *i.e.*, by the beginning to work, and not by the mere erection of the building or premises. But notice of the objection to the establishment of the business should be given as soon as possible.

A cattle market company, cattle never having been slaughtered in the market before, erected a building in which they allowed persons to slaughter cattle on payment of 2s. a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. It was held that the company were liable to the penalty under the corresponding provisions of 11 & 12 Vict. c. 83, s. 61, for having established the business of slaughterers of cattle. *Liverpool Cattle Market Company v. Hodson*, L. R. 2 Q. B. 131; 36 L. J. M. C. 30; 8 B. & S. 184; 15 L. T. (N.S.) 534; 15 W. R. 563; 31 J. P. 245.

The C. company, without leave of the sanitary authority, carried on a business of steaming bones by screwing them down in metal cylinders hermetically sealed, and introducing dry steam, which stripped the bones and caused no offensive smell, no water being used in the process:—Held, that the quarter sessions were right in quashing a conviction of the company in respect of an offensive trade of bone boiling. *Cardiff Manure Company v. Cardiff Union*, 54 J. P. 661.

Note to
Section 112.

The trade of a slaughterer of cattle, which was in the corresponding section of the former Act, is removed from this section, being specially provided for by sections 169, 170, *post*. The business of a butcher, though involving the slaughtering of beasts on the premises, was held not to be necessarily an "offensive, noisy or noisome trade," within the meaning of a restrictive covenant, in a lease prohibiting the carrying on of such trades. *Cleaver v. Bacon*, 4 T. L. R. 27; *Rapley v. Smart*, 10 T. L. R. 174.

An injunction was granted to restrain a person from burning bricks on his own land so as to be a nuisance to a neighbour. *Walter v. Selfe*, 4 De G. & Sm. 323; 20 L. J. Ch. 433; 17 L. T. (o.s.) 103. But in *Cleeve v. Mahaney*, 25 J. P. 819, where the nuisance was temporary only, KINDERSLEY, V.C., refused to grant an *interim* injunction to enable the plaintiff to bring his action at law. He held that the question whether brick burning is a nuisance must depend upon circumstances, and that no general rule as to distance could be laid down. In *Hole v. Barlow*, 4 C. B. (n.s.) 334; 27 L. J. C. P. 207; 31 L. T. (o.s.) 134; 6 W. R. 619; 22 J. P. 530, in an action for a nuisance arising from the burning of bricks on the defendant's own land near to the plaintiff's dwelling-house, BYLES, J., told the jury that no action lay for the reasonable use of a lawful trade in a convenient and proper place, even though some one might suffer inconvenience from its being so carried on, and he left to the jury two questions: (1) was the place in which the bricks were burned a proper and convenient place for the purpose, and (2) if it was, was the nuisance such as to make the enjoyment of life and property uncomfortable? It was held that this was a proper direction. This case was overruled, however, by the Exchequer Chamber in *Bamford v. Turnley*, 3 B. & S. 62; 31 L. J. Q. B. 286; 6 L. T. (n.s.) 721; 10 W. R. 803. There it was held that where a man by an act on his own land, such as burning bricks, causes so much annoyance to another in the enjoyment of a neighbouring tenement as to amount *prima facie* to a cause of action, it is no answer that the act was done in a proper and convenient spot, and was a reasonable use of the land. It was also held that the fitness of the locality does not prevent the carrying on of an offensive, though lawful, trade from being an actionable nuisance; but whenever, taking all the circumstances into consideration, including the nature and extent of the plaintiff's enjoyment before the act complained of, the annoyance is sufficiently great to amount to a nuisance, an action will lie whatever the locality may be. An injunction was granted to restrain brick burning in *Beardmore v. Tredwell*, 9 Jur. (n.s.) 272; 31 L. J. Ch. 892; 3 Giff. 683; 7 L. T. (n.s.) 207; but the remarks of STUART, V.C., who followed *Hole v. Barlow*, *supra*, must also be read subject to the decision in *Bamford v. Turnley*. The latter case was followed in *Cavey v. Ledbetter*, 32 L. J. C. P. 104; 13 C. B. (n.s.) 470; 3 F. & F. 14; 9 Jur. (n.s.) 798, but ERLE, C.J., added that it would be a misdirection if the judge told the jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to take into their consideration any evidence showing that the act complained of was one of ownership on the part of the defendant, which was clearly lawful if it did not cause discomfort to a neighbour, and that it was done with full intention to prevent discomfort in respect of time and place and manner and degree. In *Wanstead Local Board v. Hill*, 13 C. B. (n.s.) 479; 32 L. J. M. C. 135; 7 L. T. (n.s.) 744; 11 W. R. 368, it was held that the business of *brick making* was not of itself a noxious or offensive business within the meaning of the corresponding clause in 11 & 12 Vict. c. 63. The court held that the business must be of a noxious or offensive nature analogous to those specified at the beginning of the clause. WILLES, J., observed, that "it is necessary to be extremely cautious in construing this Act, whereby trades are brought within the jurisdiction of justices." He said that "the substances, which are dealt with in the trades which are specified, are substances which, without anything being done to them, must be, or by progress of time must necessarily become a nuisance and annoyance to the neighbourhood." Persons aggrieved by brick burning must, therefore, have recourse to their ordinary remedy by action for damages or an injunction. The principles on which an injunction will be granted or refused have been already indicated. An injunction was refused in *Luscombe v. Steer*, 17 L. T. (n.s.) 229; 15 W. R. 1191; and granted in *Roberts v. Clarke*, 18 L. T. (n.s.) 49; *Bareham v. Hall*, 22 L. T. (n.s.) 116; *White v. Jameson*, *ante*, p. 116; and *Dunston v. Neale*, 1 T. L. R. 462. In *Crawford v. Hornsea Steam Brick and Tile Company*, 45 L. J. Ch. 432; 34 L. T. (n.s.) 923; 24 W. R. 422, when damages instead of an injunction were awarded, a memorandum of the decree was ordered to be endorsed on the plaintiff's title deed.

In *Cardwell v. Newquay Local Board*, 39 J. P. 742, the Court of Queen's Bench decided that they could not hold that a manufactory of manure was of itself a noxious and offensive trade, and there being no evidence of its being noxious or offensive to the locality, that no penalty was incurred. But such a manufactory may be within the provisions of the Alkali Works Regulation Act, 1881, mentioned below.

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The business of cow-keeping in a borough may be so conducted and regulated as not to be a nuisance or offensive. *Manson v. Forrest*, 14 Ct. of Sess. Cas. (4th ser.) 802; 24 Scottish Law Reporter 578.

In *Passey v. Oxford Local Board*, 43 J. P. 622, the appellant set up the business of a rag and bone merchant, and the justices convicted him under this section, holding as a fact that the business was noxious and *ejusdem generis* with those specified in the action. It was held that the conviction was right. In *Boyton v. Brantree Local Board*, 52 L. T. (N.S.) 99; 48 J. P. 582, it was held that this section did not apply to the keeping of a fried-fish shop, which was not a place necessarily offensive. But it should be observed that a fried-fish shop might be within the provisions of section 114, *post*. See that section and the case of *Houldershaw v. Martin*, cited in the notes.

An injunction was granted, restraining the defendant, a restaurant keeper, from allowing the escape of noxious odours to the injury of his neighbour's premises. *Dore v. Secorini*, 31 S. J. 727.

A small-pox hospital is not a noxious or offensive business within the meaning of this section. *Withington Local Board v. Manchester (Mayor, &c., of)* [1893], 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. (N.S.) 330; 41 W. R. 306; 57 J. P. 340; 2 R. 367.

It is, of course, impossible to enumerate the various trades which are noxious or offensive within the meaning of this section. Nor are the cases in which the court have interfered at the suit of the persons aggrieved any guide in the determination of the question whether such trades are noxious or offensive, for a trade not noxious may be so conducted as to be an actionable nuisance, as has been already stated with reference to brick burning. Reference may be made to the following cases as instances of actionable nuisances arising from trades or manufactures: vapours and smells from candle making, *Bliss v. Hall*, 4 Bing. N. C. 183; vapours from arsenic works, *Reg v. Garland*, 15 J. P. 260; vapours from copper works, *Bankart v. Houghton*, 28 L. J. Ch. 473; 27 Beav. 425; *St. Helen's Smelting Company v. Tipping*, 11 H. L. C. 642; L. R. 1 Ch. 66; 29 J. P. 579; the manufacture of manure from night soil, *Knight v. Gardner*, 19 L. T. (N.S.) 277; coke ovens, *Salvin v. North Brancepeth Coal Company*, L. R. 9 Ch. 705; 44 L. J. Ch. 149; 31 L. T. (N.S.) 154; 22 W. R. 904; smoke from cement works, *Umfreville v. Johnson*, L. R. 10 Ch. 580; 44 L. J. Ch. 752; 23 W. R. 844; the manufacture of tar, sulphate of ammonia and anthracene, *Bigsby v. Dickinson*, 4 Ch. D. 24; 46 L. J. Ch. 280; 35 L. T. (N.S.) 679; 25 W. R. 89, 122; chemical works, *Brooke v. Wigg*, 8 Ch. D. 510; 47 L. J. Ch. 749; 38 L. T. (N.S.) 732; 26 W. R. 729.

It is well to consider that the consent of the local authority can have no other effect than to render the establishment of a noxious trade no breach of the above enactment. It will not legalize what would otherwise be actionable or illegal. It is possible that a business above referred to may be carried on so as not to amount to a nuisance at common law; but the statute forbids the very establishment of it without the consent of the authority, and if, when established with their consent, the business is so carried on as to be a nuisance, the ordinary remedies (see section 111, *ante*, p. 130) will be available against the person so carrying it on.

The Alkali Works Regulation Act, 1881 (44 & 45 Vict. c. 37), regulates certain noxious or offensive trades, and is set out in the Appendix. See also the Explosives Act, 1878 (38 & 39 Vict. c. 17), and the Acts relating to the storing and safe keeping of petroleum (34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; 44 & 45 Vict. c. 67, in the Appendix).

For the powers and duties of local authorities as to bakehouses, see the Factories and Workshop Act, 1878, Amendment Act, 1883, in the Appendix, and note to section 10, *ante*, p. 29.

(d) There will be some difficulty in applying the latter part of the section, as it deals with continuing offences. As to the recovery of the penalty, see section 251, *post*.

Section 113.

Bye-laws as to
offensive
trades in
urban district.

113. Any urban authority may from time to time make bye-laws^(a) with respect to any offensive trades^(b) established with their consent either before or after the passing of this Act^(c) in order to prevent or diminish the noxious or injurious effects thereof.

(a) See sections 182—6, *post*, as to the making, confirmation, and publication of bye-laws, and section 251, *post*, as to the enforcing of them.

The Local Government Board have issued model bye-laws under this section, in respect of certain trades.

(b) These words are general, and are not confined to any specified trades.

(c) Hence the bye-laws can only apply to any newly established trades, *i.e.*, to trades established since 1848. See note (a) to section 112, *ante*, p. 131.

Duty of urban
authority to
complain to
justice of
nuisance
arising
from offensive
trade.

114. Where any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia,^(a) is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners,^(b) or by any ten inhabitants^(c) of the district of such urban authority to be a nuisance or injurious to the health^(d) of any of the inhabitants of the district, such urban authority shall^(e) direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction.^(f)

The court shall inquire into the complaint, and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district,^(g) and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia,^(h) the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall be liable to a penalty⁽ⁱ⁾ not exceeding five pounds, nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds :^(k)

Provided that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act.^(l)

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior court of law or equity against any person in respect of the matters alleged in such certificate.^(m)

(a) It will be observed that these trades are not all enumerated in section 112, and that there is no limitation in this section as to the time when they were established.

(b) By 49 & 50 Vict. c. 48, s. 27, a registered medical practitioner is defined to mean a person registered under the Medical Acts, *i.e.*, the 21 & 22 Vict. c. 90, and any Acts amending the same. By 21 & 22 Vict. c. 90, s. 38, the certificate will be

invalid unless both the medical practitioners signing it are duly registered. And by section 27 of the same Act a copy of the medical register, purporting to be printed and published by the registrar of the general council under the direction of the council, is evidence of registration.

Note to
Section 114.

(c) It is presumed that this word here applies to *residents* in the district—inhabitants.

(d) If the effluvia amount to a nuisance in the sense of causing annoyance and discomfort, it is sufficient to bring the trade within this section without proving also that injury to health results from such effluvia. *Malton Board of Health v. Malton Farmers' Manure Company*, 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. (N.S.) 755; 27 W. R. 802; 44 J. P. 155. This case has been followed with reference to similar words in sections 47 and 91, *ante*, pp. 74, 108. And in *Houldershaw v. Martin*, 49 J. P. 179; 1 T. L. R. 323, it was held that the medical officer's certificate under this section was sufficient, though it stated simply that a fried-fish shop was a nuisance, and did not further state that it was injurious to health.

(e) These words are imperative. It, therefore, appears that the local authority must proceed. If they do not they will be in default, and the consequences thereof appear in section 299, *post*. They should, however, have a proper certificate in writing, supported by some reasonable evidence to satisfy them as to the propriety of taking the requisite steps.

(f) See the definition in section 4, *ante*, p. 22. Though the court must inquire into the complaint, still a *prima facie* case should be laid before it so as to justify a summons.

(g) See note (d), *supra*.

(h) The burden of proving this is on the defendant. It was on the complainant under 18 & 19 Vict. c. 121, s. 27.

(i) See, as to recovery of this penalty, section 251, *post*. It is to be observed that, although by the text the penalty is not to be less than 40s., yet the court has power to reduce that amount in the case of a first conviction under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 4.

(k) The difficulties which formerly existed in 18 & 19 Vict. c. 121, s. 27, have not been removed in this section. It does not appear what is to be done as to the removal of the suspension referred to in the following paragraph, if the works be executed according to the order of the court, or if they be not executed, or if the means prescribed by the court fail to effect their object. Probably the court should adjourn the hearing, and after the adjournment, if the works have been done and the nuisance abated, the court might exercise their power under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16, which empowers them, without proceeding to conviction, to dismiss the information with or without payment of damages or costs, or perhaps the court might make the order with a direction that it was not to be drawn up if certain things were done. Unless, however, there be some determination of the information, there can be no appeal, for in default of the determination of the court there is no cause of appeal. There cannot, therefore, be a *suspension* of the final determination in order to enable the defendant to appeal. By suspension is understood that the court may withhold their order, so as to see whether the party complained of will carry out the directions as to abating the nuisance.

(l) See section 269, *post*, as to appeals.

(m) That is, in the High Court of Justice, but the authority should carefully weigh the consequences, and be prepared to pay the costs on failure of the proceedings. For a case in which proceedings for an injunction were taken, see *Attorney-General v. Smith*, "Times," 7th June, 1894.

115. Where any house, building, manufactory, or place, which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, (a) such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences as if the house, building, manufactory, or place, were situated within such district; so, however, that summary proceedings (b) shall not in any case be had otherwise than before a court having

Power to
proceed where
nuisance
arises from
offensive trade
carried on
without
district.

Section 115. jurisdiction in the district where the house, building, manufactory, or place is situated.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house, building, manufactory, or place, which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house, building, manufactory, or place, which is certified as aforesaid to be a nuisance, or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority. (c)

(a) This is a new clause which, in the first part, removes the doubt which appears to have existed as to whether 18 & 19 Vict. c. 121, s. 27, had any operation in respect of trades carried on *without* the district of the local authority.

(b) That is under section 251, *post*.

(c) The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 21, sub-sect. (5), provides that section 115 of the Public Health Act, 1875 (set out in the First Schedule to that Act), shall continue to extend to London, with the substitution of a sanitary authority under that Act, for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis, or to any building, manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of that Act, and any manufactory, building, or place which is dangerous to health. By section 141 of the same Act, "London" is defined to mean the administrative county of London.

The concluding clause of the above section, which contained a definition of the expression "nuisance authority," was repealed by the Public Health (London) Act, 1891. See a similar repeal in section 108, *ante*, pp. 128, 129, and the notes thereto.

UNSOOUND MEAT, ETC.

Power of
medical officer
of health
to inspect
meat, &c.

116. Any medical officer of health or inspector of nuisances may at all reasonable times (a) inspect and examine any animal, (b) carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk (c) exposed for sale, or deposited in any place (d) for the purpose of sale, or of preparation for sale, and intended for the food of man, (e) the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice. (f)

(a) 18 & 19 Vict. c. 121, s. 11, enabled a justice to grant a warrant to justify the entry for the purpose of inspection; no such provision is now made, but if admission is prevented the party preventing is rendered liable to a penalty under section 118, *post*, p. 140.

Sunday is not necessarily an unreasonable time. This question must depend upon the circumstances of the case. *Small v. Bickley*, 32 L. T. (N.S.) 726; 39 J. P. 422. In that case the appellant, a butcher, at his residence, half a mile from his shop, on a Sunday afternoon, was requested to go himself, or send some one with the key, to admit the inspector of nuisances to his shop, in order that some meat there might be examined. He refused, and was convicted under 26 & 27 Vict. c. 117, s. 3, of preventing, obstructing, or impeding the inspector when duly engaged in carrying into execution the provisions of that Act. It was held that although Sunday afternoon might, under some circumstances, be a reasonable time for examining the meat, the

appellant at most had refused to assist the inspector, and had not prevented, obstructed, or impeded him within the meaning of the section.

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Section 116.

H., an inspector of nuisances for the borough of S., was convicted of perjury on an indictment that alleged that, upon the hearing of an information against G. for exposing for sale a number of rabbits which were unfit for the food of man, it was a material question whether H. had duly inspected and examined the carcasses of the rabbits, and whether they had appeared to him to be unfit for the food of man before and at the time when he seized the same under the above section. The indictment then alleged that H. falsely swore (among other things) that he had examined critically every rabbit, and set out the evidence giving the details of such examination; and further alleged that H. did not examine the rabbits in the manner sworn. It appeared that upon two occasions, subsequently to the time of seizure, when he had merely made a cursory examination (sufficient, however, to entitle him to seize the rabbits), he had examined them as he had sworn he had. It also appeared that at the time of the seizure the rabbits were, in fact, unfit for the food of man. It was held that as the indictment did not allege that the evidence was given with reference to the time of seizure, and since the evidence, if taken with reference to the other occasions upon which examinations were made, was perfectly true, all the allegations might be true without H. having sworn falsely, and that, therefore, no offence was disclosed upon the indictment. *Reg. v. Hadfield*, 55 L. T. (N.S.) 783; 51 J. P. 344; 16 Cox C. C. 148.

(b) In *Moody v. Leach*, 44 J. P. 459, the Recorder of Southampton, in a case tried before him at quarter sessions, held that the word *animal* included a live animal. According to the opinions of Drs. Letheby and Tidy, given in evidence in a case reported at 37 J. P. 267, an animal killed immediately before or during or after parturition is unfit for human food.

(c) It is to be noticed that these words are specific, and do not include every kind of food. The bye-laws of municipal corporations sometimes provide for the seizure of unwholesome food; and in *Skillico v. Thompson*, 1 Q. B. D. 12; 45 L. J. M. C. 18; 33 L. T. (N.S.) 506; 24 W. R. 57; 39 J. P. 773, a defendant was held to be rightly convicted under such a bye-law for selling unwholesome cheese. But cheese is not mentioned in this section. And the stipendiary magistrates at Manchester and Leeds have respectively held that the section does not extend to putrid butter or bad eggs exposed for sale. *Stone's Justices' Manual*, 28th edit., p. 917, and 43 J. P. 677.

It should be observed, however, that where the local authority have adopted the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), it is provided by section 28 of that Act that sections 116—119 of the Public Health Act, 1875 (relating to unsound meat), shall extend and apply to all articles intended for the food of man sold or exposed for sale, or of preparation for sale within the district of any local authority.

(d) This word is used in a general sense and is not qualified here. *Young v. Gattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67; 33 J. P. 260. In *Daly v. Webb*, 4 Ir. Rep. C. L. 309, diseased meat placed upon a cart when passing along the streets of the city of Dublin from a slaughter-house to a place for the manufacture of preserved meats, was held to have been properly seized under a similar section in 26 & 27 Vict. c. 117, s. 2.

(e) It must be carefully noticed that the provision does not apply to food for animals, nor to articles prepared for exportation, for manure or similar purposes.

(f) The responsibility and the duty are imposed on the medical officer or inspector of satisfying himself that the article in question is exposed for sale or deposited for sale, or of preparation for sale and intended for the food of man, and if he is so satisfied he may seize. But it is not necessary for him to give notice to the owner of the goods seized, nor is the justice before whom the goods are taken bound to summon the owner before the condemnation thereof, as provided by the next section. *White v. Redfern*, 5 Q. B. D. 15; 49 L. J. M. C. 19; 41 L. T. (N.S.) 524; 28 W. R. 168; 44 J. P. 87.

The officer cannot himself destroy the articles seized. He must take them to be dealt with by a justice under the next section.

Except in places where the Public Health Acts Amendment Act, 1890, is in operation there must be a proper seizure to justify subsequent proceedings under the next section. See *Vinter v. Hind*, cited in note (c) to the next section.

It may be observed here that, although the medical officer or inspector may seize

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Section 116.**

and carry away by an assistant, the execution of the powers conferred by the section is personal, and cannot be carried into effect by an assistant medical officer or assistant inspector, in the absence of the medical officer or inspector.

Power of
justice to
order destruc-
tion of
unsound
meat, &c.

117. If it appears to the justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; (a) and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, (b) shall be liable to a penalty (c) not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, (d) flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months.

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place.

(a) All the justice has to do is to inspect the article, and if he is satisfied that it is unsound or unwholesome he is to condemn it, and order it to be destroyed or disposed of so as to prevent its being used for human food. He need not before so doing give notice to or summon the owner. See *White v. Redfern*, section 116, note (f). But the justice may, if he thinks fit, hear evidence tendered by the owner. *Re Bater and Birkenhead (Mayor, &c., of)* [1893], 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. (N.S.) 220; 41 W. R. 513; 4 R. 438; 58 J. P. 7.

In *Williams v. Narbreth Sanitary Authority*, "Times," December 7th, 1882, the court expressed an opinion that a condemnation on the day after seizure during hot weather in the month of July was bad. But in *Burton v. Bradley*, 51 J. P. 118, the court held that the text did not require the condemnation to be on the same day as the seizure, but that it was enough if reasonable diligence was used.

Several questions of difficulty may arise after the condemnation of the goods seized. It may transpire that the goods were not properly seized, as in *Vinter v. Hind, infra*, or that they were not intended for the food of man or the like. In such a case what is the remedy by the owner? According to the judgments in *White v. Redfern*, he might claim compensation under section 308.

In *Re Bater and Birkenhead (Mayor, &c., of)*, *supra*, it was held that the owner was not entitled to refuse to take back the meat, and could only recover the damage sustained by it in consequence of its seizure, but that he was entitled to be repaid the costs reasonably incurred by him in attending before the justices and resisting the condemnation of the meat.

(b) In *Reg. v. Blount*, 43 J. P. 383, the defendant was charged with having unlawfully exposed or deposited for sale or preparation for sale certain meat intended for human food. The magistrate dismissed the charge on the ground that the defendant was himself unaware of the fact that the meat was upon his premises, as it had arrived there and had been seized in his absence. Subsequently a summons was issued against the defendant in respect of the same seizure for having on his premises meat for the purpose of sale, &c., and the same evidence was given as that adduced on the first charge. The defendant was convicted on the second summons, but the court quashed the conviction on the ground that the defendant might have been convicted of the offence charged on the second summons when he appeared upon the first, and that the second summons was for the same matters. The court seem to have considered, therefore, that the section created only one offence. But in *White v. Redfern*, 49 L. J. M. C., at p. 22, FIELD, J., said that the section created two offences. It will be prudent, therefore, in issuing a summons, to confine it to one offence, otherwise a conviction founded upon it may be bad for duplicity.

The appellant was an under-bailiff on the estate of N., a large landowner, and it

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Section 117.

was his duty to receive his instructions from and obey the orders of the head bailiff. Two cows belonging to N. were slaughtered, as they were affected by disease. The appellant was not present when the cows were slaughtered, but on the same day he was told by the head bailiff to send the meat to Portsmouth, and to go there himself to meet it. The appellant went to Portsmouth the following day, and saw a butcher named B., and on the next day the head bailiff, having been told that the meat had not been sent off, directed the appellant to take the meat to P. railway station and consign it to the butcher. The transit of the meat to the P. station was superintended by the appellant, who took charge of it. It was sent by train in the appellant's own name to the butcher at Portsmouth, the appellant sending a telegram to the butcher: "Two carcasses of meat sent to you; make best of it." The butcher replied that the meat, which was then lying at Portsmouth railway station, was of no use to him. The appellant then sent a telegram to the station master: "Ask consignee to do the best he can. If he can't dispose of it, bury it, and charge sender expenses." The meat was seized while lying at the station, and condemned as unsound. Upon these facts the appellant was convicted under the above section of exposing unsound meat for sale, being the person "to whom the same belonged:"—Held, quashing the conviction, that there was no evidence whatever upon the facts to show that the appellant was the person "to whom the meat belonged" within the meaning of the 117th section of the Act. *Newton v. Monkcom*, 58 L. T. 231; 52 J. P. 692; 16 Cox C. C. 382.

It was held that a person having unsound meat in his possession—unsound meat intended for the food of man—was liable to be convicted under the above section, notwithstanding that he had not exposed the meat for sale. *Mallinson v. Carr* [1891], 1 Q. B. 48; 60 L. J. M. C. 34; 39 W. R. 270; 55 J. P. 270. In a later case the appellant, a farmer in the country, sent to a salesman in London meat which to his knowledge was unsound for the purpose of its being sold and used as human food. The salesman did not expose the meat for sale, but put it to one side, and called the attention of the respondent, an inspector of nuisances, to it. The respondent seized the meat and obtained a justice's order for its destruction. The appellant having been convicted of being the owner of unsound meat "unlawfully deposited for the purpose of sale and intended for the food of man," it was held that the conviction must be quashed, for there had been no exposure for sale, and the meat had not been found in the possession or on the premises of the appellant. *Barlow v. Terrett* [1891], 2 Q. B. 107; 60 L. J. M. C. 104; 65 L. T. (N.S.) 148; 39 W. R. 640; 55 J. P. 632. The Glasgow Police Amendment Act, 1890 (53 & 54 Vict. c. cccxi.), gives power to seize diseased or unsound meat intended for human consumption and exposed for sale, and by section 20 it renders liable in a penalty the person to whom the same belongs or in whose possession, or on whose premises the same was found. A complaint charging a person with having been found in possession of diseased meat intended for sale for human consumption set forth that the meat was seized in a barrow belonging to the accused, driven by his servant, and under his orders:—Held, that there was a relevant averment of possession by the accused. *Neilson v. Parkhill*, 20 Ct. Sess. Cas. (4th ser.), J.C. 24; 30 Scottish Law Reporter, 247; 3 White's Just. Rep. 379.

It may be noticed here that neither this Act nor the Public Health Acts Amendment Act, 1890, contains any provision similar to that in the Public Health (London) Act, 1891, s. 47, sub-sect. (3), under which the court gave the decision in *Reg. v. Dennis* [1894], 2 Q. B. 458; 63 L. J. M. C. 153; 42 W. R. 587; 58 J. P. 622; 10 T. L. R. 485.

Upon similar provisions in Acts relating to Scotland it has been held that when a person is charged with having in his possession for human food any meat which is unsound, it is not necessary to prove that he knew of its being on his premises or of its unsound condition. *Dickson v. Linton*, 15 Ct. of Sess. Cas. (4th ser.), Just. 76; 25 Scottish Law Reporter 504; 2 White's Just. Rep. 51. Where a farmer sent meat to a consignee in a meat market, and the meat was seized and condemned in the market, it was held that the meat could not be said to be in the farmer's "possession as and for human food." *Cairns v. Linton*, 16 Ct. of Sess. Cas. Just. 81; 26 Scottish Law Reporter 417; 2 White's Just. Rep. 228.

(c) As to the recovery of this penalty, see section 251, *post*. Upon the hearing of a summons under this section it is not necessary to show that the defendant had personal knowledge of the condition of the meat, &c., seized. *Blaker v. Tillstone* [1894], 1 Q. B. 345; 63 L. J. M. C. 72; 70 L. T. (N.S.) 31; 42 W. R. 253; 58 J. P. 184; 10 T. L. R. 178; 10 R. 94.

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The respondent, a butcher, exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards, at the request of the appellant, an inspector of nuisances, handed it over to him, and it was condemned by a justice as unfit for the food of man. It was held that the meat was not so seized and condemned as is prescribed by section 116, and the defendant could not for that reason be convicted under this section. *Vinter v. Hind*, 10 Q. B. D. 63; 31 W. R. 198; 48 L. T. (N.S.) 359; 47 J. P. 373. But in a district where the Public Health Acts Amendment Act, 1890, has been adopted it is provided by section 28 that a justice may condemn any article and order it to be destroyed or disposed of under the above section if satisfied on complaint made to him that such article is diseased, unsound, or unwholesome, or unfit for the food of man, although the same has not been seized as mentioned in section 116. See the Act, *post*.

In the same case of *Vinter v. Hind*, STEPHEN, J., expressed an opinion that the defendant cannot, in a prosecution under this section, call evidence for the purpose of showing that the meat which has been condemned was not in fact unsound. But this *dictum* was expressly overruled in *Waye v. Thompson*, 15 Q. B. D. 342; 54 L. J. M. C. 140; 53 L. T. (N.S.) 358; 33 W. R. 733; 49 J. P. 693.

(d) Each separate exposure of a piece of bad meat is a separate offence in respect of which a penalty and costs can be imposed. *In re Hartley*, 31 L. J. M. C. 332; 26 J. P. 438.

Penalty for
hindering
officer from
inspecting
meat, &c.

118. Any person who in any manner prevents (a) any medical officer of health or inspector of nuisances from entering any premises, (b) and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes (a) any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds. (c)

(a) See *Small v. Bickley*, *ante*, p. 136, as to what does not amount to a preventing, &c., under this section. There must be some active step in the way of prevention or obstruction. See the next section as to search warrants by justices.

(b) See the definition in section 4, *ante*, p. 6.

(c) See as to the recovery of this penalty, section 251, *post*.

Search
warrant
may be
granted by
a justice.

119. On complaint made on oath (a) by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed (b) any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, which is intended for sale for the food of man, and is diseased, unsound, or unwholesome, or unfit for the food of man, and to search for, seize, and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds. (c)

(a) By 52 & 53 Vict. c. 63, s. 3, the expression "oath," in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes affirmation and declaration. As to the persons who are allowed by law to affirm, see the Oaths Act, 1888 (51 & 52 Vict. c. 46), and *Reg. v. Moore*, 60 L. J. M. C. 80; 66 L. T. (N.S.) 125; 40 W. R. 304; 56 J. P. 345; 17 Cox C. C. 458; *Nash v. Nawab Mahmood Ali Khan*, "The Times," 18th March, 1892.

(b) This clause appears to apply to cases where these articles are not actually

exposed for sale, and where it is difficult to allege that they are deposited for the purpose of sale in the terms of section 116, *ante*, p. 136. If the officer suspects concealment he cannot enter forcibly until he obtains a warrant under this section. Note to Section 119.

There is no penalty imposed in this case for the mere concealment of the article. To subject the party to a penalty there must have been an exposure for sale or some other act such as is made an offence by one of the previous sections.

As to the common law offences of knowingly exposing for sale in a public market unsound and unwholesome meat, see *R. v. Stevenson*, 3 F. & F. 106. It was there held that a meat salesman might be indicted and convicted at common law for knowingly sending or exposing meat for sale in a public market as fit for human food when in fact it was not so. See also *Reg. v. Jarvis*, *ib.* 108. But in *Reg. v. Crawley*, *ib.* 109, it was held that a person is not indictable for sending to a meat salesman meat he knows to be unfit for human food, if he does not know and does not intend that it is to be sold as human food.

A person who deals in food of any kind is liable to an action for damages if he sells unwholesome food; but a private person, other than a dealer or trader, is not so liable in the absence of a warranty. *Burnby v. Bollitt*, 17 L. J. Ex. 190; 11 Jur. 827; 16 M. & W. 644. But it would seem that even in the case of a dealer, there must be either a warranty or knowledge that the food is unwholesome. Thus it was held that the sale of a carcase by a meat salesman, with a latent taint of which he was ignorant, and which he had no means of knowing, did not make him liable for it, nor import any warranty that the meat was fit for human food. *Everton or Emmerton v. Matthews*, 31 L. J. Ex. 139; 5 L. T. (N.S.) 681; 10 W. R. 346; 8 Jur. (N.S.) 61; 26 J. P. 566. See also *George v. Skivington*, L. R. 5 Ex. 1; 39 L. J. Ex. 8; 21 L. T. (N.S.) 495; 18 W. R. 118, where a chemist was held liable for negligence in the preparation of a chemical compound which caused injury.

See further as to the sale of unwholesome meat and provisions, the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14, s. 15), in the Appendix, and the Acts relating to the adulteration of food and drugs, also in the Appendix. See also the case of *Shillito v. Thompson*, *ante*, p. 137, as to liability for selling unwholesome food contrary to a bye-law of a municipal corporation.

(c) See, as to the recovery of this penalty, section 251, *post*.

INFECTIOUS DISEASES AND HOSPITALS.(a)

Provisions against Infection.

120. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, (c) that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority (d) to give notice (e) in writing to the owner or occupier (f) of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice. (g) Duty of local authority to cause premises to be cleansed and disinfected. (b)

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings (h) for every day during which he continues to make default; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier,

Section 120. with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

(a) The provisions of this part of the Act are extended to canal boats by the Canal Boats Acts, which are set out in the Appendix.

This part of the Act has also been greatly extended and amended by subsequent legislation:—The Epidemic and other Diseases Prevention Act, 1883 (46 & 47 Vict. c. 59); the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35); the Public Health Act, 1889 (52 & 53 Vict. c. 64); the Infectious Disease (Notification) Act, 1889 (52 & 53 Vict. c. 72), and the Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34). All these Acts are set out, *post*, but in the notes to the several sections of the Act of 1875 reference is made to the several alterations and amendments of the law so far as these affect each section of that Act.

(b) The Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), s. 5, provides that the above section so far as it applies to any urban or rural sanitary district in which that section is adopted shall be repealed, and the provisions of that section shall be in force instead thereof. See the section and the notes thereto, *post*.

(c) This means a registered medical practitioner. See 21 & 22 Vict. c. 90, ss. 34, 38; 49 & 50 Vict. c. 48, s. 27; and see note (b) to section 114, *ante*, p. 134.

(d) This is imperative. The consequences of default appear in section 299, *post*. Reference may also be made to the Vaccination Act, 1867 (30 & 31 Vict. c. 81), s. 28, with reference to the spread of small-pox, and to the Acts mentioned in note (a), *supra*.

(e) As to the authentication and service of this notice, see sections 266, 267, *post*.

(f) The local authority have a choice to select either the owner or the occupier, but the owner will often be unable to execute the direction, and this should be considered by the local authority before it is decided to serve the notice on him. As to the definition of owner, see section 4, *ante*, p. 6.

(g) Section 46, *ante*, p. 73, contains provisions for the cleansing of houses in a filthy condition, where, on the certificate of any two medical practitioners, it appears to the local authority that the health of any person is affected or endangered, or when such cleansing would tend to prevent or check infectious disease. See also sections 80 and 84, *ante*, pp. 102, 103, as to the giving of notices and taking precautions in case of infectious disease in a common lodging-house, and section 90, *ante*, p. 106, which contains provisions with reference to the making of bye-laws, as to houses let in lodgings.

The Infectious Disease (Notification) Act, 1889, *post*, has been adopted in most districts throughout the country, and affords to local authorities means of knowledge of every case of infectious disease to which that Act applies.

(h) See as to the recovery of this penalty, section 251, *post*. It is to be observed that though the text provides for a fine of not less than one shilling, it may be still further reduced under the powers given to courts of summary jurisdiction by the Summary Jurisdiction Act, 1879.

Destruction
of infected
bedding, &c.

121. Any local authority may direct the destruction of any bedding, clothing, or other articles which have been exposed to infection from any dangerous (a) infectious disorder, and may give compensation for the same. (b)

Note that this section is extended to ships by the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35), *post*.

Under 53 & 54 Vict. c. 34, s. 6, the local authority may require the owner of bedding, &c., which has been exposed to infection, to hand the same over to an officer for disinfection, and the bedding, &c., is then to be disinfected and returned. See the section, *post*.

(a) This word is introduced to restrict the application of the section to the class of infectious disorders which endanger life. See as to common lodging-houses, sections 80, 84, *ante*, pp. 102, 103, and as to houses let in lodgings, section 90, *ante*, p. 106.

(b) See section 308, *post*, but observe that compensation under that section is limited to cases where the person who suffers damage is not himself in default. The expenses incurred under these sections in urban districts are payable out of the general district fund (section 207, *post*); in rural districts they constitute general expenses (section 229, *post*).

122. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge. **Section 122.**
Provision of means of disinfection.

See the provisions of the 53 & 54 Vict. c. 34, s. 6, as to the definition of bedding, clothing, or other articles which have been exposed to infection.

It is presumed that the local authority, not being absolutely bound to disinfect or supply an ambulance, may prescribe a charge to be paid by persons competent to pay for these conveniences.

123. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination. Provision of conveyance for infected persons.

See section 121, note (b), and the note to section 122, *ante*. As to the power of the Metropolitan Asylum Board to provide ambulances in the metropolis, see the Public Health (London) Act, 1891, s. 79. Carriages provided by the asylum managers may be used for conveying patients to and from hospitals other than those provided by such managers.

124. Where any suitable hospital or place (a) for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous (b) infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, (c) or is on board any ship or vessel, (d) may, on a certificate signed by a legally qualified medical practitioner, (e) and with the consent of the superintending body of such hospital or place, (f) be removed, by order of any justice, to such hospital or place at the cost of the local authority; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority. (g) Removal of infected persons without proper lodging to hospital by order of justice.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority (h) making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds. (i)

This section is extended to ships by the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35), *post*.

(a) This word is very general, and has been construed to apply to the infirmary or sick wards of a workhouse. 29 & 30 Vict. c. 90, s. 27, required the place to be within the district; this restriction is removed, and it may be without the district if within a convenient distance. It will be for the justices to decide whether the place is suitable when making the order.

(b) Note the introduction of this word. There are several infectious diseases which are not of themselves dangerous and do not require this special interposition.

(c) Notice has already been drawn to the ambiguity of this word in note (a) to section 77, *ante*, p. 101.

(d) See as to persons suffering from infectious disease in canal boats, the provisions of the Canal Boats Acts in the Appendix.

(e) That is, one registered under 21 & 22 Vict. c. 90, s. 34; and 49 & 50 Vict. c. 48, s. 27. As to the certificate, see 21 & 22 Vict. c. 90, s. 38.

(f) It is presumed that a general consent will suffice, otherwise the removal would be in many cases impracticable.

Note to Section 124. (g) See section 84, *ante*, p. 103. The latter provision referring to the common lodging-houses is new. See also 53 & 54 Vict. c. 34, s. 8, which prohibits in certain cases the retaining of the dead body of a person who has died of infectious disease; section 9, which prohibits the removal from a hospital except for burial of the dead body of a person who has died of infectious disease; section 10, which enables a justice to make an order for the removal of a dead body; and section 12, which enables a justice to order the detention in a hospital of a person suffering from infectious disease who has no proper lodging.

A child suffering from scarlet fever was removed to a hospital by the officer of the local authority. The removal was effected without the consent of the child's father, and without any magisterial order having been obtained under the corresponding section 42 of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101). The child having died shortly after its admission to the hospital, the father brought an action of damages against the local authority, alleging that its death had been caused by the negligent manner in which its removal to the hospital had been conducted:—Held, that as the removal had not been effected under the above-mentioned section, the defendants were not protected by section 118 of the same Act (corresponding to section 265 of this Act). *Mitchell v. Aberdeen (Magistrates of)*, 20 Ct. of Sess. Cas. (4th ser.) 253. In another case precisely similar, except that the consent of the father to the removal of the child had been first obtained, the same conclusion was arrived at. *Sutherland v. Aberdeen (Magistrates of)*, 22 Ct. Sess. Cas. (4th ser.) 95; 32 Scottish Law Reporter, 81.

(h) These words are to be read *reddendo singula singulis*. The justice is to determine when he makes the order, and the local authority when they make it.

The person suffering from the disorder has no option as to his removal, if an order be made.

(i) In *Booker v. Taylor*, reported in the "Times" of November 21st, 1882, there had been an order for the removal of a child under this section. The mother of the child resisted the removal, and was summoned for so doing. At the hearing the magistrates entered into the validity of the order and declined to convict, but the court held they were wrong in so doing; that they had no right to go behind the order and enter into its validity; and that they were bound upon the evidence to convict if there had been an obstruction.

Removal to hospital of infected persons brought by ships.

125. Any local authority may make regulations(*a*) (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, (*b*) and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence. (*c*)

This section is extended to ships by the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35), *post*.

(*a*) As to the publication of these regulations, see section 188, *post*.

(*b*) That is, under the last section or section 131, *post*.

(*c*) See as to the recovery of penalties, section 251, *post*.

Penalty on exposure of infected persons and things.

126. Any person(*a*) who—

(1.) While suffering from any dangerous(*b*) infectious disorder willfully exposes himself without proper precautions against spreading the said disorder in any street, public place, shop, inn, (*c*) or public conveyance, (*d*) or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering; or

(2.) Being in charge of any person(*e*) so suffering, so exposes such sufferer; (*f*) or

- (3.) Gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder, *(g)* Section 126.

shall be liable to a penalty not exceeding five pounds; *(h)* and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance. *(i)*

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected. *(k)*

This section is extended to ships by the Public Health (Ships) Act, 1875 (48 & 49 Vict. c. 35), *post*.

(a) It has been held to be an indictable offence to expose unnecessarily persons infected with smallpox, whether produced by inoculation or otherwise, in the public streets. *R. v. Vantandillo*, 4 M. & S. 73; *R. v. Burnett*, *ib.* 272. These decisions were cases of exposing children while suffering from disease. The text applies not only to such cases but to adults exposing themselves.

In *Best v. Stapp or Staff*, 2 C. P. D. 191n., a person knowingly took a child recovering from smallpox to a lodging at the seaside, without communicating this fact, and the children of the lodging-house keeper caught the infection, and two of them died. It was held that an action for damages at the suit of the lodging-house keeper was maintainable. Whether if there had been no knowledge on the part of the lodger the action could have been maintained, *query*.

(b) See section 124, note *(b)*, *ante*, p. 143.

(c) The introduction of the shop and the inn are new. As to what is an inn, see section 128, note *(c)*, *post*, p. 147.

(d) A public conveyance appears to be one which plies openly and publicly for passengers. A fly which is hired from an innkeeper or jobmaster may possibly not be within the provisions of the section.

Where the 53 & 54 Vict. c. 34 is adopted, section 11 provides that any person who hires or uses a public conveyance other than a hearse for the conveyance of the body of a person who has died from any infectious disease without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act.

(e) This person may be an adult, as it seems, as well as a child. But it would not include a dead person. See, however, the provisions of 53 & 54 Vict. c. 34, s. 11, set out in the preceding note.

(f) A medical man in practice at Tunbridge sent a patient who was suffering from scarlet fever to the fever hospital there with a certificate, directing him to walk in the middle of the road and not to talk to any one, but in consequence of an alleged informality in the certificate, the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom after some delay he obtained an order for the man's admission to the hospital. He then returned with the patient to the police station to procure the ambulance to convey him thither. On an information against the medical man under this sub-section, the justices were of opinion that it was not proved before them that the medical man "had charge of" the patient, that he had not wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever, and they refused to convict him. It was held that the justices were right. *Tunbridge Wells Local Board v. Bisshopp*, 2 C. P. D. 187. In *Malloch v. Hunter*, 21 Ct. of Sess. Cas. (4th series), J. C. 22; 31

**Note to
Section 126.**

Scottish Law Reporter, 332; Adam's Just. Rep., 335, a medical practitioner was charged with contravening the corresponding section (section 149) of the Public Health (Scotland) Act, 1867, in so far as he, being the person in charge of A. B., a person suffering from enteric fever, being an infectious disorder, did wilfully expose him while so suffering by placing him in a cab and conveying him from his lodgings to a hospital without taking proper precautions against spreading the disorder. The cab being a public conveyance was furnished with leather fittings, but there was no evidence as to what other precautions were necessary. The magistrate convicted the accused:—Held, on appeal, (1) that there was no offence committed unless the patient was conveyed without proper precautions; (2) that the *onus* lay on the prosecutor to prove what precautions were necessary and that they had not been used; (3) that as the prosecutor had failed to discharge this *onus* the conviction must be quashed.

(g) It is presumed that this sub-section would cover the case of a fly hired for the conveyance of an infected person and subsequently let for hire without previous disinfection. During recent epidemics of cholera in Egypt, France, and the Black Sea ports, the Local Government Board issued regulations under section 130, for the disinfection of rags from that country. And see the 52 & 53 Vict. c. 64, *post*. From an answer given in Parliament by the President of the Local Government Board, on the 23rd February, 1886, it would appear to be the opinion of the department that the provisions of this section do not extend to the removal in a public conveyance of the dead body of a person who has died of an infectious disorder. Such a case is not provided for by the Act: as already stated, however, the omission is now provided for by 53 & 54 Vict. c. 34, s. 11, *post*.

(h) As to the recovery of this penalty, see section 251, *post*.

(i) See the next section. It will be observed that this clause applies only to a public conveyance, as to which see note (d), *supra*. If a conveyance other than one which is within the meaning of this clause was used without notification by a person suffering from an infectious disease, the owner would probably be entitled to recover as damages the expenses of its disinfection, on the principle of the decision in *Best v. Staff*, *ante*.

(k) See section 122, *ante*, p. 143, and the provisions of 53 & 54 Vict. c. 34, *post*.

Penalty on
failing to
provide for
disinfection
of public
conveyance.

127. Every owner or driver of a public conveyance (a) shall immediately provide for the disinfection of such conveyance after it has to his knowledge (b) conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding five pounds; (c) but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section. (d)

(a) See section 126, notes (d), (g), and (i).

(b) That is, whether he has been aware of the persons having been infected at the time he was conveyed, or has only discovered it afterwards.

As to the obligation of the owner or driver of a public conveyance to disinfect such conveyance after it has been used for carrying the dead body of a person who has died of infectious disease, see 53 & 54 Vict. c. 34, s. 11, *post*.

(c) See as to the recovery of this penalty, section 251, *post*.

(d) This will be an answer to any proceeding for disobedience of a hackney carriage bye-law, or to proceedings under 10 & 11 Vict. c. 89, s. 52.

Penalty on
letting houses
in which in-
fected persons
have been
lodging.

128. Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, (a) as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds. (b)

For the purposes of this section, the keeper of an inn shall be deemed

to let for hire part of a house to any person admitted as a guest into Section 123. such inn.(c)

This section is extended to ships by the Public Health (Ships) Act, 1885 (48 & 49 Vict. c. 35), *post*.

(a) That is, a medical practitioner duly registered under 21 & 22 Vict. c. 90, s. 34, and 49 & 50 Vict. c. 48, s. 27. As to the certificate, see 21 & 22 Vict. c. 90, s. 38.

(b) See as to the recovery of this penalty, section 251, *post*. Admitting persons to night shelters at a charge of one penny per head per night, is not a letting to hire of the house or part of a house used for that purpose. *Colclough v. Edwards*, 57 J. P. 772.

(c) An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with lodgings, and whatsoever they reasonably desire for themselves and their horses while on their way. *Burn's Justice*, vol. i., p. 64; *R. v. Luellin*, 12 Mod. 445; *Thompson v. Lacy*, 3 B. & Ald. 283; *Reg. v. Rymer*, 2 Q. B. D. 136; 46 L. J. M. C. 108; 35 L. T. (N.S.) 774; 25 W. R. 415; 41 J. P. 199.

Where the 53 & 54 Vict. c. 34, has been adopted the lessor will generally have means of knowing whether infectious disease has existed on the premises or not, for by section 7 of that Act a penalty is imposed upon persons who cease to occupy any house, room, or part of a house in which any person has within the preceding six weeks been suffering from an infectious disease, unless the house, &c., has first been disinfected or unless notice of the existence of the disease has been given to the owner of the house, &c. See the section *in extenso*, *post*.

See also 53 & 54 Vict. c. 70, s. 75, *post*, as to the condition to be implied on letting of houses for the working classes.

129. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous(a) infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.(b)

(a) See section 124, note (b), *ante*, p. 143.

(b) As to the prosecution for this offence, see section 251, *post*. Reference may be made to the Housing of the Working Classes Act, 1890, s. 75, *post*, as to the implied warranty on the letting of certain houses.

It is provided by 53 & 54 Vict. c. 34, s. 7, *post*, that every person ceasing to occupy any house, room, or part of a house, and who on being questioned by the owner thereof or by any person negotiating for the hire of such house, &c., as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, shall be liable to a penalty not exceeding 10l.

130. The Local Government Board may from time to time make, alter, and revoke such regulations(a) as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious diseases,(b) and preventing the spread of cholera and such other diseases, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coast thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed.(c) Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations.(d)

Power of
Local Govern-
ment Board
to make
regulations.

Any person wilfully neglecting or refusing to obey or carry out or

Section 130. obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding fifty pounds.(e)

(a) See the cholera regulations and the regulations as to the disinfection of rags issued by the Local Government Board set out in the Appendix, *post*. The memoranda affixed to these orders by the medical officer of the Board should be carefully perused.

(b) As to what diseases are epidemic or endemic, see section 134, note (a), *post*, p. 151. *Query*, whether until publication in the *Gazette*, the regulations will have the force of law.

(c) It is provided by 52 & 53 Vict. c. 64, *post*, that regulations made under the above section may provide for such regulations being enforced and executed by the officers of customs as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by the above section, may provide for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels. The regulations now in force and made under the above section are set out in full after the text of the 52 & 53 Vict. c. 64, *post*.

(d) See section 135, *post*, p. 152, and the note thereon. The publication in the *Gazette* is evidence of the making and issue of the regulations.

(e) See, as to the recovery of this penalty, section 251, *post*.

Hospitals.

Power of local authority to provide hospitals.

131. Any local authority may (a) provide for the use of the inhabitants (b) of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception ; (c) or

Contract for the use of any such hospital or part of a hospital or place of reception ; (d) or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on. (e)

Two or more local authorities may combine in providing a common hospital. (f)

The provisions of this section are now extended to ships by the 48 & 49 Vict. c. 35, *post*.

(a) This word is permissive ; the section does not create a duty.

It has been held that under this section a local authority may establish a hospital in another district without the consent of the local authority of that district. *Withington Local Board v. Manchester (Mayor, &c., of)* [1893], 2 Ch. 19 ; 62 L. J. Ch. 393 ; 68 L. T. (n.s.) 330 ; 41 W. R. 306 ; 57 J. P. 340 ; 2 R. 367.

By 42 & 43 Vict. c. 54, s. 14, it is provided that if it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts relating to the relief of the poor, should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by order of the Local Government Board, transfer such hospital or building accordingly, and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution and order. If the same is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district, the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building. Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that

part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept, and the application of the same so paid.

Note to
Section 131.

For the powers of the district asylums boards in the metropolis to provide hospitals, see 30 Vict. c. 6; 31 & 32 Vict. c. 122, s. 35; 32 & 33 Vict. c. 63; 33 & 34 Vict. c. 18, ss. 1, 2; 34 & 35 Vict. c. 108, s. 10; 39 & 40 Vict. c. 61, ss. 40—42; 42 & 43 Vict. c. 6; 42 & 43 Vict. c. 54, s. 13; 54 & 55 Vict. c. 76, ss. 75—81.

As to the powers of local authorities to petition county councils for the establishment of isolation hospitals, see the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), in the Appendix, *post*.

(b) This provision does not supersede the duty of a board of guardians to provide hospital accommodation for paupers. It gives to rural district councils, however, greater power than that which the guardians possess under the Poor Law Acts, for the hospitals provided under this Act are for the reception of the sick, whether paupers or not.

(c) It has already been observed that the local authority are merely enabled, and not required, to provide hospitals under this section. The statute will not, therefore, be any defence to an action against the authority, nor will it prevent an injunction from issuing against them if they erect a hospital for infectious disease so as to be a nuisance to any person. This was so held with reference to similar permissive provisions in the Metropolitan Poor Act, 1867 (30 Vict. c. 6), in *Managers of the Metropolitan Asylum District v. Hill and Others*, 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 27 W. R. 617; 45 J. P. 664.

With regard to hospitals for smallpox or fever patients, it has been questioned how far they could be erected in a town. In *Baines v. Baker*, Amb. 159; 3 Atk. 750, the Lord Chancellor refused an injunction to stay the erection of a smallpox hospital in Coldbath Fields, in London, and referred to a case of *R. v. Frewen*, where on indictment for a nuisance in erecting such a hospital in Sussex, the defendant was acquitted; and see *R. v. Sutton*, 4 Burr. 1116. In *Managers of the Kensington Sick Asylum District v. Gunter* (not reported), WICKENS, V.C., intimated an opinion in conformity with the previous decision. The rule in such cases seems to be that laid down by Lord BLACKBURN in *Metropolitan Asylum Board v. Hill*, *sup.*, "To gather together in one spot patients suffering from infectious disease is lawful, but it must be under such guards as not to endanger the public health by communicating this infectious disease; and, as it seems to me, so as not to produce injury to the rights of the owners of adjoining property by producing a nuisance to it." In a Scotch case, *Mutter v. Fyfe*, 11 Ct. of Sess. Cas. (2nd series), 303, the Court of Session held that a cholera hospital was not necessarily a nuisance, and refused to restrain its erection.

In *Chambers v. Managers of the Metropolitan Asylums District*, 25 S. J. 834, CAVE and KAY, JJ., granted an interlocutory injunction restraining the defendants until the trial of the action from sending any more smallpox patients into their Fulham hospital. The court appear to have acted upon evidence given to the effect that the hospital was a centre of contagion. In *Fleet v. The Managers of the Metropolitan Asylums District*, 1 T. L. R. 80, the defendants had established within 685 yards of the plaintiff's house a small pox camp. The plaintiff alleged that the health of the neighbourhood had been endangered by the camp, and that the camp was a nuisance, and claimed an injunction to restrain the defendants from maintaining it. PEARSON, J., held that the plaintiff had failed to prove that there was any danger to him or those residing upon his property, and that the action must be dismissed. This decision was affirmed by the Court of Appeal, 2 T. L. R. 361. In the course of his judgment, CORTON, L.J., pointed out that it was for the plaintiffs to prove an appreciable injury to their property. (And see *Saunders v. New Windsor (Mayor, &c., of)*, "Law Times," 18th September, 1886, and the decision of CHARLES, J., in *Matthews v. Sheffield (Mayor, &c., of)*, "Law Times," 7th October, 1887.) In a subsequent case, where such appreciable injury was proved, an *interim* injunction was granted, restraining a sanitary authority from continuing a smallpox hospital. *Bendelow v. Wortley Union (Guardians of)*, 57 L. J. Ch. 762; 57 L. T. (N.S.) 849; 36 W. R. 168; 4 T. L. R. 67. See also *Garton v. Guildford, Godalming, and Woking Joint Hospital Board*, "Times," 23rd March, 1895.

The defendants proposed to establish a smallpox hospital on land of their own in an adjoining district within 240 yards of two public roads, within 90 yards of a much used part of a cemetery, and within 256 yards of the nearest residence. Plaintiff contended that what the defendants proposed to do amounted to a public

**Note to
Section 131.**

nuisance as being dangerous to the health of the neighbourhood, and applied for an injunction:—Held, that in the present state of science the plaintiff had failed to show that there was a probability that the apprehended danger would in fact ensue. *Attorney-General v. Manchester (Mayor, &c., of)* [1893], 2 Ch. 87; 62 L. J. Ch. 459; 61 L. T. (N.S.) 608; 41 W. R. 459; 57 J. P. 343; 3 R. 427; 9 T. L. R. 315.

(d) Before contracting for the use of any building other than a hospital or part of a hospital, it may be well to inquire whether there is any covenant which prevents the use of the premises as a hospital. The use of premises for this purpose has been held to be a *business* where the patients made small payments according to their means. *Bramwell v. Lacy*, 10 Ch. D. 691; 48 L. J. Ch. 339; 40 L. T. (N.S.) 361; 27 W. R. 463; 43 J. P. 446; *Portman v. Home Hospitals Association*, W. N. (1879), 196.

The establishment of a hospital for the treatment of out-door patients, suffering from diseases of the throat, nose, ear, skin, and eye, fistula, and other diseases, was held to be a breach of a covenant in a building lease against carrying on certain specified trades, or doing any act “which shall or may be or grow to the annoyance, nuisance, grievance, or damage of the lessor, his heirs, or assigns, or the inhabitants of the neighbouring or adjoining houses,” and will be restrained by injunction. In order to enforce such a covenant it is not necessary to show that actual damage or pecuniary loss has been sustained. It is sufficient without proving actual risk of infection that sensible people feel a reasonable apprehension of risk and interference with the pleasurable enjoyment of their houses for ordinary purposes, as distinguished from a mere fanciful feeling of distaste entertained by sensitive persons. Per LINDLEY, L.J.: Without deciding that the existence of such a hospital is *per se* an annoyance, the apprehension of risk of infection entertained by reasonable men amounts to a breach of the extra protection intended to be given to the covenantee by the introduction into the covenant of the words “annoyance and grievance,” in addition to “nuisance or damage.” *Harrison v. Good*, L. R. 11 Eq. 338, in limiting the term “nuisance” in a restrictive covenant to that which is a legal nuisance questioned:—Held, also, that the covenant was not confined to the lessor and his own sub-tenants, but would be broken by annoyance to the inhabitants of neighbouring or adjoining houses. *Tod-Heatley v. Benham*, 40 Ch. D. 80; 58 L. J. Ch. 83; 60 L. T. (N.S.) 241; 37 W. R. 38; 5 T. L. R. 9.

The subsequent sections, 175, 176, enable the local authority to procure the land required for the site, and section 207 and the following sections provide for the cost.

(e) As to the power of guardians to subscribe towards the maintenance and support of a hospital or infirmary, see 14 & 15 Vict. c. 105, s. 4; 32 & 33 Vict. c. 63, s. 16; 42 & 43 Vict. c. 54, s. 10. As to the power of the Metropolitan Asylum Board to contract with local authorities in the metropolis, see 54 & 55 Vict. c. 76, ss. 76, 80.

(f) There are not sufficient details provided here to enable this combination generally to be carried into practical operation, but if an agreement be properly drawn, it may be possible to effect a combination which will act satisfactorily.

Recovery of
cost of main-
tenance of
patient in
hospital.

132. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

This section is extended to ships by the 48 & 49 Vict. c. 35, *post*. See also 53 & 54 Vict. c. 34 (*post*), s. 12, as to the detention in a hospital of a person suffering from infectious disease, and sections 9 and 10 of the same Act as to the burial of persons dying in a hospital of infectious disease.

The local authority are bound to receive into their hospital all sick inhabitants of their district, whether paupers or not; but if the guardians of the poor law union send their paupers to such hospital, it seems that they must be prepared to pay for their maintenance. See *Reg. v. Rawtenstall (Mayor, &c., of)*, “Times,” 2nd August, 1894.

As regards a person not a pauper, he or the person at whose request he is placed in the hospital will be liable to pay the cost, and if he does not do so may be sued in any court for the recovery of debts, with this qualification, that whereas the usual statute of limitation for civil debts is six years, here it is six months.

Note to Section 132.

133. Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Power to provide temporary supply of medicine.

This section is re-enacted from 31 & 32 Vict. c. 115, s. 10, but it is not easy to see how it is to be carried out. Apparently the object of the section is to secure the services of a competent person, and so far the Local Government Board can act, but they can hardly scrutinise the medicines. They may, perhaps, determine that no provision is required for the particular emergency.

This section is extended to ships by the 48 & 49 Vict. c. 35, *post*.

As to the power of guardians to enter into similar arrangements with hospital authorities, see section 131, note (e), *ante*, p. 150.

PREVENTION OF EPIDEMIC DISEASES.

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, (a) the Local Government Board (b) may make and from time to time alter and revoke regulations for all or any of the following purposes: (namely,)

Power of Local Government Board to make regulations for prevention of diseases.

- (1.) For the speedy interment of the dead; and
- (2.) For house to house visitation; and
- (3.) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom, or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

(a) *Epidemic diseases* are "those which prevail among a large portion of the people of a country, rage for a certain time, and then gradually diminish and disappear, to return again at periods more or less remote. The cholera and influenza lately appeared as epidemic diseases in this country, and the continued fevers called synchus and typhus, and what are termed the eruptive fevers, as scarlet fever, the smallpox, the measles, frequently prevail as epidemics in different parts of the country. It is essential to the medical notion of an epidemic disease, that it should be dependent on some common and widely extended cause, of a temporary in contradistinction to a persistent nature."

Endemic diseases are "those peculiar forms of disease which arise spontaneously, as it is termed, in a country, or in particular localities, and which are ordinarily produced by the peculiar climate, soil, air, water, &c. Thus ague is the endemic disease of marshy countries or localities, the swelled throat or bronchocele is endemic in the Alps, and the plica in Poland. The word bears pretty much the same signification,

Note to Section 134. in relation to the diseases of a country that the term *indigenous* does to its plants." Penny Cyclopaedia, *in verbis*.

These diseases, however, must be *formidable*, which imply so extensive an existence as to create a very general alarm.

(b) It rests now with the Local Government Board to determine how far the nature of the disease and the extent of its prevalence is such as to require these extraordinary measures to be taken. They have absolute control over the regulations to be prescribed.

The metropolis is provided for by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 82, 87.

Publication of regulations and orders.

135. All regulations and orders so made by the Local Government Board shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

That is to say, the production of the *Gazette* shall be evidence of the making and issuing of the orders. But the copy produced must contain the imprint of the Queen's printer, and purport to be published by authority. A conviction was quashed where a court of quarter sessions had received in evidence an entire page of the *Gazette* not containing these requisites. *Reg. v. Lowe*, 48 L. T. (N.S.) 768; 47 J. P. 535; 52 L. J. M. C. 122.

Local authority to see to the execution of regulations

136. The local authority of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things as may be necessary for mitigating any such disease, (a) or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation. (b)

(a) The local authority are not confined to these regulations. They may also use all other measures which may be recommended to them in the emergency, not at variance with the official regulations.

(b) The cost of such prosecutions will be a legal charge on the funds of the authority prosecuting, in so far as they are not recovered from the defendants. The prosecutions in question will be under section 140, *post*, p. 153.

Power of entry.

137. The local authority and their officers shall have power of entry (a) on any premises (b) or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid.

(a) No warrant or previous demand is required. The refusal to admit will be a wilful obstruction within section 140, *post*, p. 153.

(b) See the definition of *premises* in section 4, *ante*, p. 6.

Poor law medical officer entitled to costs of attendance on board vessels.

138. Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick. (a)

Where such services are rendered by any medical practitioner(*b*) who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on ship-board, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction ;(*c*) and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made. Section 138.

(*a*) It is not clear what is meant by this clause. The section is taken from 18 & 19 Vict. c. 116, s. 2. To whom are the charges to be paid? Apparently to the guardians of the union or parish, though the captain is to pay them. The proper meaning of the section appears to be that the captain shall pay to the guardians the extra charges of the medical officer, and the expenses of the treatment.

(*b*) He must be registered under 21 & 22 Vict. c. 90, and 49 & 50 Vict. c. 48.

(*c*) See the definition in section 4, *ante*, p. 22, and section 251, *post*, as to the mode of recovery. The only effect of this section is to provide the summary remedy, for the provision as to the charges is what the law would have recognised without this enactment.

139. The Local Government Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof. Local Government Board may combine local authorities.

See the further provision in Part VIII. for the formation of unions of districts for any of the purposes of this Act.

140. Any person who—

- (1.) Wilfully violates any regulation so issued by the Local Government Board as aforesaid ; or,
- (2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

Penalty for violating or obstructing the execution of regulations.

shall be liable to a penalty not exceeding five pounds.

See, as to the recovery of this penalty, section 251, *post*.

MORTUARIES, &c.(*a*)

141. Any local authority may, and if required by the Local Government Board shall, provide(*b*) and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary(*c*)), and may make bye-laws with respect to the management and charges for use of the same ;(*d*) they may also provide for the decent and economical interment,(*e*) at charges to be fixed by such bye-laws of any dead body which may be received into a mortuary. Power of local authority to provide mortuaries.

(*a*) The provisions of this Act as to mortuaries are extended to cemeteries by the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *post*.

**Note to
Section 141.**

(b) See section 175, *post*, p. 244, as to the provisions for acquiring land for a site. It will be observed that whereas formerly it was optional with the urban authority to provide a mortuary, now the Local Government Board can compel the local authority to provide one.

This section does not apply to the metropolis. The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 88, 93, enables sanitary authorities in the metropolis to provide places for the reception of dead bodies.

(c) Mortuaries may also be provided under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 42, which provides that "It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish in the metropolis for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein; and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and such churchwardens and overseers may exercise all such powers as, under the Act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish." It has been doubted whether the provisions of this section are extended to the country at large by 16 & 17 Vict. c. 134, s. 7, as the latter section, while so extending the operation of 15 & 16 Vict. c. 85, ss. 10—42 inclusive, goes on to enumerate the purposes for which such extension is to be made, and these purposes do not in terms include the providing of a mortuary. It is submitted, however, that no effect can be given to the 16 & 17 Vict. c. 134, s. 7, in so far as it purports to extend the operation of 15 & 16 Vict. c. 85, s. 42, without holding that the latter section is now of general application. See also section 7 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), as to the adoption of the Burial Act in a rural parish. Brooke-Little's "Law of Burials," 2nd edition, p. 176, note.

(d) See as to the making, &c., of bye-laws, sections 182—188, *post*. The Local Government Board have issued model bye-laws under the section. The memorandum attached to these bye-laws contains valuable suggestions as to the site and structure of the mortuary and as to the arrangements for its administration; these suggestions should be carefully considered before a mortuary is erected and before any rules are adopted for its management.

(e) *Query*, by whom? Apparently by the local authority.

Justice may
in certain
cases order
removal of
dead body to
mortuary.

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, (a) order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer (b) to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner (c) from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds. (d)

(a) That is, registered under 21 & 22 Vict. c. 90, s. 34, and 49 & 50 Vict. c. 48. The provisions of this section are available only where there is a mortuary.

The provisions of the Infectious Disease (Prevention) Act, 1890, may here be referred to. Where that Act is in force, section 8 provides that no person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours, the body of any person who has died of any infectious disease. Section 9 enables means to be taken to prevent the removal except to a mortuary, or for burial of the body of a person who has died of infectious disease in a hospital. Section 10 enables a justice to order the burial of the body of a person who has died of an infectious disease, if such body has remained unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, &c., or of any body whose retention in a house may endanger health. See these sections *in extenso*, *post*.

Note to
Section 142.

(b) This must be the relieving officer of the union or parish in which the mortuary is situated, and care must be taken to have the order of the justice served upon him, or otherwise to secure that he shall have notice of the case. He cannot recover the amount himself from the poor rate, but he can enter it in his accounts and receive the amount from the guardians. It is to be observed that this provision is confined to cases where the removal has been ordered by a justice. With reference to other cases, the memorandum attached to the model bye-laws says, "It is to be observed that, although 7 & 8 Vict. c. 101, s. 31, empowers the board of guardians to bury, at the cost of the poor rate, the body of any poor person which may be within their parish or union there is no obligation upon them to incur the expense unless the body is lying in the workhouse or on premises belonging to the guardians. If, therefore, the body of a poor person has been received in the mortuary, it by no means follows that the guardians or their duly authorised officer could be rendered responsible for the observance of the bye-laws prescribing the period within which the body must be removed. It is possible that cases may occur when this responsibility may attach to the guardians or their officer in consequence of the directions which they may have given in pursuance of the enactment above mentioned, and in all such cases, the guardians or their officer, on being informed of the requirements of the bye-laws, would, no doubt, take steps to ensure compliance with these requirements. Where, however, the cost of burial is only partially defrayed out of the poor rates, the sanitary authority in dealing with an application for permission to use the mortuary may sometimes find it necessary to ascertain that the applicant is, either voluntarily or by obligation, in a position to control the arrangements with regard to the burial, and may, therefore, in the event of permission to use the mortuary being granted at his request, be held liable for neglect to comply with the bye-law limiting the time within which the body should be removed. But, upon the whole, it may reasonably be expected that the instances in which the sanitary authority may deem it incumbent upon them to enforce the bye-laws as to the removal of bodies will be extremely rare."

(c) See the definition in section 4, *ante*, p. 22, and the mode of recovery in section 251, *post*. If the guardians have paid the relieving officer, he will prosecute the proceedings for their reimbursement.

(d) As to the recovery of this penalty, see section 251, *post*.

143. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) (a) for the reception of dead bodies during the time required to conduct any *post-mortem* examination ordered by a coroner (b) or other constituted authority, and may make regulations (c) with respect to the management of such place; [and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such *post-mortem* examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for *post-mortem* examinations when ordered by the coroner.] (d)

Power of local authority to provide places for *post-mortem* examinations. [Repealed as to part in italics by 50 & 51 Vict. c. 71.]

(a) This exception requires special attention. It is desired that places should be provided for the removal of dead bodies from the rooms of poor people when they die, and it would create on the part of the relatives a repugnance to such removal in

Note to Section 143. many cases if a suspicion arose that such bodies might be subject to anatomical examination. 2 & 3 Will. 4, c. 75, provides for dissections, and should be carefully attended to. The corresponding section applicable to the metropolis is 54 & 55 Vict. c. 76, s. 90.

(b) See the Coroners Act, 1887 (50 & 51 Vict. c. 71), ss. 21—24.

(c) These are not bye-laws requiring confirmation. See section 188, *post*, which, however, provides for the publication of these regulations.

(d) This section is repealed from the words “and where any such place” to the end of the section, by the Coroners Act, 1887 (50 & 51 Vict. c. 71). Section 24 of that Act provides that when a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a *post-mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest. Section 22 provides that no order of payment shall be given, or fee or remuneration paid to any medical practitioner, for the performance of any *post-mortem* examination which may be instituted without the previous direction of the coroner. Section 25 provides that the local authority for a county or borough having a coroner, shall make or cause to be made a schedule of the several fees, allowances, and disbursements which, in the holding of any inquest, may be lawfully paid and made by the coroner holding such inquest (other than the fees payable to medical witnesses under that Act). By section 26 the coroner is to pay the remuneration or fee to each medical witness (including the fees for *post-mortem* examination) immediately after the inquest. By section 27, the coroners of counties are to lay their accounts before the local authority of the county or borough; and such local authority may, if they shall think fit, examine the coroner on oath as to such account, and, on being satisfied of the correctness thereof, such local authority respectively shall make an order on the treasurer of the said county or borough of the sum due to him on such account.

PART IV.

LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways.

144. Every urban authority shall, within their district, exclusively Section 144.
of any other person, (a) execute the office of and be surveyor of highways, Powers of
and have, exercise, and be subject to all the powers, authorities, duties, surveyors of
and liabilities of surveyors of highways under the law for the time being highways and
in force, save so far as such powers, authorities, or duties are, or may be, of vestries
inconsistent with the provisions of this Act; (b) every urban authority under 5 & 6
shall also have, exercise, and be subject to all the powers, authorities, Will. 4, c. 50,
duties, and liabilities which, by the Highway Act, 1835, or any Act vested in
amending the same, (c) are vested in and given to the inhabitants in urban
vestry assembled of any parish within their district. (d) authority.

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint. (e)

(a) This section determined the authority of a parish vestry, or a highway board, or a surveyor of highways within the district of the urban authority.

Difficult questions formerly arose with reference to parts of parishes excluded from urban districts newly formed (see the notes to section 216, *post*). But these difficulties are to a large extent, if not wholly, removed by the provisions of sections 25 and 54 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*.

It will be observed that this section applies only to urban authorities, but the Local Government Board may invest a rural authority with the power of an urban authority under this section by order made under section 276, *post*. A rural authority which is or becomes co-incident in area with a highway district may obtain the powers of a highway board under the provisions of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), ss. 3—5, set out in the Appendix.

And now by section 25 of the Local Government Act, 1894, *post*, as from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district, and highway boards shall cease to exist, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections 144 to 148 of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority. Provided that the council of any county may by order postpone within their county, or any part thereof, the operation of this section, so far as it relates to highways, for a term not

Note to Section 144. exceeding three years from the appointed day, or such further period as the Local Government Board may on the application of such council allow. As to the appointed day, see 84 (4) of the same Act, *post*.

(b) The powers and duties of a surveyor of highways depend upon 5 & 6 Will. 4, c. 50, and amending statutes. For further information on this subject reference must be made to treatises on highway law. There is one branch of the subject which requires notice here—viz., that relating to the liability of the urban authority as surveyors of the highways in cases of accident caused by the non-repair or by the improper condition or obstruction of the highways. The authorities are now applicable to the case of rural district councils also.

A surveyor of highways is not liable to an action for injury caused by the non-repair of the highways. *Young v. Davis*, 7 H. & N. 760; 8 Jur. (n.s.) 286; 31 L. J. Ex. 250; 10 W. R. 524; 6 L. T. (n.s.) 363; 26 J. P. 743; affirmed on appeal to the Exchequer Chamber, 2 H. & C. 197; 10 Jur. (n.s.) 79; 9 L. T. (n.s.) 145; 11 W. R. 735. The ground of this decision was that the surveyor had no liability other than that which has previously existed in the case of the inhabitants of the parish. It had already been decided that when the duty, the neglect of which was the cause of action, was one attaching to the inhabitants of a county, the remedy was by indictment and not by action (*Russell v. The Men of Devon*, 2 T. R. 667); and it was held that the county surveyor merely took the place of the inhabitants for the purpose of suing and being sued, but without any further liability. *Mackinnon v. Penson*, 9 Ex. 609; 18 Jur. 513; 23 L. J. M. C. 97; 18 J. P. 164. The same principles were held to govern the liability of the surveyor of highways.

These cases must be carefully distinguished from *Hartnall v. Ryde Commissioners*, 33 L. J. Q. B. 39; 4 B. & S. 361; 8 L. T. (n.s.) 574; 27 J. P. 599; 10 Jur. (n.s.) 257, where town commissioners were held liable for an accident caused by their neglect of a duty imposed upon them in their corporate capacity by the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 49; and *Ohrby v. Ryde Commissioners*, 33 L. J. Q. B. 296; 5 B. & S. 743; 10 Jur. (n.s.) 1048; 28 J. P. 663, where the accident arose from neglect of a similar duty imposed by section 52 of the same statute. For a judicial distinction see per WILLES, J., in *Parsons v. St. Matthew, Bethnal Green*, *infra*, and per KELLY, C.B., in *Wilson v. Halifax (Mayor of)*, L. R. 3 Ex. 117; 37 L. J. Ex. 44; 17 L. T. (n.s.) 660; 16 W. R. 707; 32 J. P. 230.

The Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 90, contains provisions similar to that in the text transferring the liabilities of the surveyors of highways to the metropolitan vestries. It was held, with reference to that section, that the vestries were under no greater liability than the surveyor would have been, and that an action would not lie against them for an accident caused by the non-repair of a highway. *Parsons v. Vestry of St. Matthew, Bethnal Green*, L. R. 3 C. P. 56; 37 L. J. C. P. 62; 17 L. T. (n.s.) 211; 16 W. R. 85; 32 J. P. 55. In *Lampard v. Commissioners of Sewers of the City of London*, 1 T. L. R. 114, the plaintiff brought an action for personal injuries sustained by him owing to the defective condition of the pavement, arising from the alleged negligence of the defendants. The alleged negligence consisted merely in non-repair, and it was held that the defendant had been rightly nonsuited. And see per LUSH, J., in *Guardians of Holborn v. Vestry of St. Leonard's, Shoreditch*, *ante*, p. 70; and per MANISTY, J., in *Taylor v. St. Mary Abbots, Kensington (Vestry of)*, 2 T. L. R. 668. The pavement over a cellar in the metropolis has been held to be part of the highway. *Hamilton v. St. George's Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 91; 29 L. T. (n.s.) 428; 22 W. R. 86; 38 J. P. 405.

The point was raised but not decided in *Wilson v. Halifax (Mayor of)*, *supra*, whether a local board were liable to an action for injuries caused by non-repair of a highway. It was expressly decided that they were not in *Gibson v. Preston (Mayor of)*, L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 10 B. & S. 942; 22 L. T. (n.s.) 293; 18 W. R. 689; 34 J. P. 342; approved and followed in *Cowley v. Newmarket Local Board* [1892], A. C. 345; 62 L. J. Q. B. 65; 67 L. T. (n.s.) 486; 56 J. P. 805, and *Municipality of Picton v. Geldert* [1893], A. C. 524; 69 L. T. (n.s.) 510; 42 W. R. 114; 56 J. P. 805; 1 R. 447.

But misfeasance is carefully to be distinguished from non-feasance in the sense of failure to keep in proper repair. Where a heap of stones was left by the side of a road without light, and the plaintiff, on a dark night, drove his cart against it, and was

upset and injured, the road being in the district in which the defendants were the local board, and the heap having been left there by the negligence of the persons employed by them to repair the roads, it was held that the defendants were liable as the local board to an action for the negligence of their servants, and that they were not exempt from liability by reason of the corresponding section of the Public Health Act, 1848, which imposed on them the same duties and liabilities as a surveyor of highways. *Foreman v. Canterbury (Mayor of)*, L. R. 6 Q. B. 214; 40 L. J. Q. B. 138; 24 L. T. (N.S.) 385; 19 W. R. 719; 35 J. P. 629. The principle of this decision may be thus briefly stated. A surveyor of highways is liable to a stranger for any act of personal negligence or for the negligence of his own servants. The local board are in the same position, the only decision to the contrary, *Holliday v. St. Leonard's, Shoreditch*, 11 C. B. (N.S.) 192; 30 L. J. C. P. 361, being overruled by *Mersey Docks v. Gibbs*, L. R. 1 H. L. 93 (per BLACKBURN, J.). See also per BRETT, L.J., in *Glossop v. Heston and Isleworth Local Board*, 12 Ch. D. at p. 120.

A surveyor of highways is not liable for injuries caused by an obstruction left in the highway by the neglect of a contractor under him. *Taylor v. Greenhalgh*, L. R. 9 Q. B. 487; 43 L. J. Q. B. 168; 31 L. T. (N.S.) 184; 23 W. R. 4; 38 J. P. 599. In that case the defendant was surveyor of highways appointed by the vestry at a salary. By a resolution of the committee of management it was ordered that a part of a road should be raised for about 150 yards, and that defendant should employ men to do it. Defendant contracted with G. to do the work at so much per yard, the vestry finding the materials. G. proceeded to do the work, employing his own men. During the progress of the work one-half of the width of the road was raised first, and the other half left temporarily about a foot lower. No fence or light was put up to warn persons using the road at night, and the plaintiff, driving with a horse and dog-cart, was upset and injured. The defendant had not personally interfered in doing the work, or in directing the road to be left as it was. It was held that the defendant was not liable for the injury to the plaintiff either at common law or by reason of 5 & 6 Will. 4, c. 50, s. 56, the court holding that the persons whose negligence caused the accident were not servants of the defendant so as to bring him within *Foreman v. Canterbury (Mayor of)*, *supra*. But in another action against the same defendant it appeared that the defendant set the work out, determined the levels, and superintended on behalf of the committee. As it was necessary that the work while in progress should be fenced and lighted at night, and the defendant had only contracted for labour, the duty of fencing and lighting remained on him, and he was held responsible for negligence in performing this duty, whereby the damage was caused. *Pendlebury v. Greenhalgh*, 1 Q. B. D. 36; 45 L. J. Q. B. 2; 23 L. T. (N.S.) 372; 24 W. R. 98; 40 J. P. 36.

Taylor v. Greenhalgh was afterwards reversed in the Court of Appeal (24 W. R. 311), but it is necessary to state it in full as decided in the Court of Queen's Bench, for the difference between it and *Pendlebury's Case* was not so much a difference on any point of law as a difference between the view taken by the Court of Queen's Bench of the facts then before it, and the view which the Court of Appeal took of the facts stated in the case subsequently before them. Per Lord CAIRNS, C., 1 Q. B. D., at p. 40. In *Reid v. Darlington Highway Board*, 41 J. P. 581, a highway board finding that part of the wall of a bridge needed repair, instructed their surveyor to employ S., a contractor to do the work. S. thereupon, by his servants, did the work, and the surveyor of the board did not interfere. In course of the work S.'s servants left stones in the highway, which were not lighted at night, and R., travelling in a gig, ran against them, and was injured. It was held that there was no evidence upon which the board or its surveyor could be held liable for the injury to R. As to the liability of the contractor in such a case, see *Black v. Thirst*, 2 H. & C. 20; 32 L. J. Ex. 188; 8 L. T. (N.S.) 251, which may be compared with the previous case of *Overton v. Freeman*, 11 C. B. 867; 21 L. J. C. P. 52.

The defendants, a highway board, had left a heap of stones on the side of a road within their jurisdiction, at a place which was used as a dépôt for stones used in repairing the road. The contractor, a servant of the defendants, in placing stones there, had allowed them to project a few inches on to the road. A person when driving along the road one dark night, drove against the heap and thereby met with his death. His widow and children thereupon brought an action under Lord CAMPBELL'S Act against the defendants. It was held that the action was maintainable, and that inasmuch as the so-called contractor was really a servant of the

Note to defendants, they were liable. *Tucker v. Axbridge Highway Board*, 53 J. P. 87; 5
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A cart was injured through contact with a heap of stones which had been allowed to remain after nightfall on a highway. The stones had been laid there by a carter who acted under the orders of a person to whom the surveyor of a local board had given general directions as to repairing the road; but the surveyor did not himself know that the stones had been laid on the road. It was held that the facts did not show any evidence of an offence by the surveyor within the meaning of 5 & 6 Will. 4, c. 50, s. 56. *Hardcastle v. Bielby* [1892], 1 Q. B. 709; 61 L. J. M. C. 101; 66 L. T. (N.S.) 343; 56 J. P. 149. It seems to have been assumed in this case that the 5 & 6 Will. 4, c. 50, s. 56, would apply to a surveyor of a local board; but it is submitted that such is not the case, the local board being themselves surveyors of highways within the meaning of the section.

But though a local board are not, in the case already mentioned, liable for injuries sustained in consequence of their negligence as surveyors of highways, there are many cases where, by reason of their acting in other capacities, they may be liable for negligence which occasions injury to persons using the highway. In one case, as the plaintiff was riding along a highway, under which was a sewer, his horse trod on a grid or grating, put there to drain the surface water off the highway into the sewer. The grid being in a defective state, gave way, and the horse's leg was injured. The plaintiff brought an action against the local board, who were surveyors of the highways under the Public Health Act, 1848, ss. 68, 117, and in whom the sewers were vested by sections 43, 45, of the same Act. It was held that, though the defendants were not liable as surveyors of the highways, they were liable as owners of the sewer, of which the grid formed part, for negligence in not keeping the grid in a proper state. *White v. Hindley Local Board*, L. R. 10 Q. B. 219; 44 L. J. Q. B. 114; 32 L. T. (N.S.) 460; 23 W. R. 651; 39 J. P. 533. In another case the defendants, who were both the highway and the sewer authorities of West Derby, employed a contractor to construct a pipe sewer under a highway within their district. The contractor in laying the pipes dug a trench, which he afterwards filled in with earth, and the roadway was apparently made good. The work was done under the directions and to the satisfaction of the defendant's surveyor. Some months after it was finished, a subsidence in the soil in the trench took place, without any assignable cause, leaving the road apparently sound. The plaintiff's horse, in consequence of the surface giving way, fell into the trench and was injured. It was held that there was evidence that the work of filling in the trench had been negligently and improperly done; that the defendants were liable as the sewer authority, and, perhaps, also as the highway authority (the latter liability apparently depending on the negligence of the defendant's surveyor, as in *Pendlebury v. Greenhalgh*, *supra*). *Smith v. West Derby Local Board*, 3 C. P. D. 423; 47 L. J. C. P. 607; 38 L. T. (N.S.) 716; 27 W. R. 137; 42 J. P. 615. As to the liability of the contractor in such a case, see *Hyams v. Webster*, L. R. 4 Q. B. 138; 38 L. J. Q. B. 21; 9 B. & S. 1016; 17 W. R. 232; 31 J. P. 439. All, or nearly all, of the cases on the subject, were reviewed in *Borough of Bathurst v. MacPherson*, 4 App. Cas. 256; 48 L. J. P. C. 61; 41 L. T. (N.S.) 778; 43 J. P. 827, where a municipality in New South Wales were held by the Privy Council to be liable for an accident caused by a defective drain, the neglect to repair which had led to the falling away of the brickwork and the consequent formation of a dangerous hole in the road. The governing fact in this case was that the conduct complained of was, in the view of the Privy Council, misfeasance. Per Lord HOBHOUSE in *Municipality of Pictou v. Geldhart* [1893], A. C., on p. 531. Compare *Meeling v. Vestry of St. Mary, Newington*, 9 T. L. R. 54. *White v. Hindley Local Board* was cited and approved of in *Blackmore v. Vestry of Mile End Old Town*, 9 Q. B. D. 451; 51 L. J. Q. B. 496; 46 L. T. (N.S.) 869; 30 W. R. 740; 47 J. P. 52. In that case a water meter, which was the property of a water company, and used for measuring the water supplied by the company to the defendants, the vestry of a metropolitan parish, for watering the streets, was placed by the defendants in a box of theirs sunk in the footway of one of the streets, and covered with an iron flap. The defendants were surveyors of highways under 18 & 19 Vict. c. 120, s. 95, and were by section 116 authorised to cause the streets in their parish to be watered. The plaintiff while walking along the street stepped on the iron flap, and by reason of its having been worn smooth, and become slippery and dangerous, he fell and was injured. It was held that although the defendants might not be

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liable as surveyors of highways for negligence in not keeping the iron flap in a proper state, they were liable in their capacity as the authority for watering the street, in which capacity they had placed the iron flap there. In a still more recent case the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway, the valve cover projected an inch above it. The plaintiff's horse, using the highway, stumbled over the valve cover and was hurt. In an action against the defendants who were both the water authority and the highway authority, for the injury to the horse, it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway, and that the plaintiff was entitled to recover. *Kent v. Worthing Local Board*, 10 Q. B. D. 118 ; 52 L. J. Q. B. 77 ; 48 L. T. (N.S.) 362 ; 31 W. R. 583 ; 47 J. P. 23. But this last case has been questioned in the recent case of *Moore v. Lambeth Waterworks Company*, 17 Q. B. D. 462 ; 55 L. J. Q. B. 304 ; 34 W. R. 559. There it was held that a water company, authorised or obliged by Act of Parliament to maintain a water plug in a highway, is not liable in damages to a passer-by who falls over the plug by reason of the road having worn away round it, the plug itself being in good order. The Court of Appeal intimated that perhaps *Kent v. Worthing Local Board* could be distinguished on the ground that the defendants were both highway authority and water authority, but that if not, it could not be upheld. And now, finally, *Kent v. Worthing Local Board* has been expressly overruled by the Court of Appeal on precisely similar facts in *Thompson v. Brighton (Mayor, &c., of)* ; *Oliver v. Horsham Local Board* [1894], 1 Q. B. 332 ; 63 L. J. Q. B. 181 ; 70 L. T. (N.S.) 206 ; 42 W. R. 161 ; 58 J. P. 297 ; 9 R. 111.

The defendants, a water company, laid a communication pipe from their main to the consumer's house. In the communication pipe there was a stop-cock and box communicating with the surface of the road, the aperture of which was left uncovered. The plaintiff, who at the time was lame, was walking along the road with the assistance of a staff, and not seeing the aperture, put the staff into it, fell, and received the injuries complained of. At the trial there was evidence that the aperture was dangerous to passers by ; but it was alleged on the part of the defendants that the property in the stop-cock box was in the consumer, and that by statute the consumer was bound to maintain and repair it. The learned judge at the trial nonsuited the plaintiff :—Held, affirming the decision of the Divisional Court (53 J. P. 424 ; 5 T. L. R. 451), that inasmuch as there was evidence of negligence on the part of the defendants, the nonsuit was wrong. *Strutt v. Southwark and Vauxhall Water Company*, 5 T. L. R. 638.

A corporation may be liable for damages caused by non-repair of a road which they had agreed to repair under section 29 of the Tramways Act, 1870. *Howitt v. Nottingham Tramways Company*, 12 Q. B. D. 16 ; 53 L. J. Q. B. 32 ; 32 W. R. 248. It should be observed, however, that some doubt has been cast upon that decision by the Court of Appeal in *Steward v. North Metropolitan Tramways Company*, 16 Q. B. D. 556 ; 55 L. J. Q. B. 157 ; 54 L. T. (N.S.) 35 ; 34 W. R. 316 ; 50 J. P. 324.

A railway bridge spanned a road in the defendants' district. After the erection of the bridge the road was dedicated to the public, and it subsequently became vested in the defendants. At the time of dedication the road was higher at the entrance of the bridge than at the exit, and the road continued in a similar state up to the commencement of the action. The plaintiff was driving along the road, and in passing under the bridge he met with an accident, his head coming in contact with the bridge in consequence of the road being higher at that part. In an action by him against the defendants for damages for injuries sustained, it was held that as the road was dedicated, subject to this obstruction, the action could not be maintained. *Warner v. Wandsworth District Board of Works*, 53 J. P. 471. See on the same point, *Fisher v. Prowse*, 2 B. & S. 770 ; 31 L. J. M. C. 212.

The defendants who were the highway and lighting authority erected a post at the entrance and in the centre of a footpath to prevent cattle straying up the footpath, and near the post they placed a lamp, which they were in the habit of lighting at nights. The plaintiff was passing along the footpath at night, when the lamp was out or not lighted, and in consequence of the darkness he came against the post and was injured. It was held that an action lay against the defendants. *Lamley v. East Retford (Mayor, &c., of)*, 55 J. P. 133. With this case may be compared *Cowley v. Newmarket Local Board*, 55 J. P. 54 ; 6 T. L. R. 321, where it was held that the liability of local boards in respect of highways is no greater than was formerly that of

Note to Section 144. — surveyors of highways, and they are not, therefore, responsible for mere nonfeasance. This decision was affirmed in the Court of Appeal, 7 T. L. R. 29, and again in the House of Lords [1892], A. C. 345 ; 62 L. J. Q. B. 65 ; 67 L. T. (N.S.) 486 ; 42 W. R. 115 ; 56 J. P. 805 ; 1 R. 447. See also *Municipality of Picton v. Geldert, ubi supra*.

C., who was the owner of certain cottages in a public highway, received a notice from the defendants requiring him to connect his cottages with the main sewer, and in compliance therewith he dug a trench in the road and made the connection to the satisfaction of the defendants' surveyor, and he then filled up the trench. The soil afterwards subsided, and the subsidence was the cause of the accident to the plaintiff while driving in a pony cart. The defendants were the sewer authority, and the highway authority of the district. In an action for damages for personal injuries :— Held, that the defendants were not liable as the sewer authority, on the ground that the notice did not constitute C. their agent, nor as the highway authority, on the ground that no action would lie against a local board for personal injuries arising from the non-repair of a highway. *Steel v. Dartford Local Board*, 60 L. J. Q. B. 256.

A vestry, acting as a sewer authority, laid down a new sewer, and, in so doing, a contractor employed by them laid bare a wrought iron service water-pipe, which was about two and a-half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the trench some clay was put round the pipe, but not in such a quantity or in such a manner as to prevent it from leaking. A few months afterwards the pipe leaked, and the surrounding clay and earth, being thereby moistened, gave way under a heavily laden van which the plaintiff was driving, and the van being overturned, the plaintiff was thrown from it to the ground and seriously injured. Upon an action brought to recover damages from the defendants, it was held that the vestry knew, or ought to have known, the character and condition of the pipe at the time it was laid bare in constructing the new sewer, and consequently were liable for negligence in not having taken special precautions against its leaking thereafter. *Cox v. Paddington Vestry*, 64 L. T. (N.S.) 566.

The foregoing cases were discussed in *Reg. v. Poole (Mayor, &c., of)*, 19 Q. B. D. 602 ; 56 L. J. M. C. 131 ; 57 L. T. (N.S.) 485 ; 36 W. R. 239 ; 52 J. P. 84 ; 16 Cox C. C. 323. In that case an indictment against a municipal corporation for non-repair of a highway alleged that the highway was in decay, and that the corporation "acting by the council as the sanitary authority for the urban district" ought to repair and amend the same, &c., but there was no allegation to show how the defendants were liable, nor did the indictment conclude with the words "against the form of the statute." At the trial the judge intimated his willingness to make any amendment within his power, but no amendment was in fact made. A verdict being found for the Crown, it was held—(1.), that the indictment was bad, and that the defendants were entitled to judgment *non obstante veredicto* ; (2.), that even assuming the necessary amendments to be made, the defendants were entitled to judgment, there being nothing in the Public Health Act, 1875, to make the urban sanitary authority liable to indictment for non-repair in the same sense as that in which the parish or other persons liable *ratione tenuræ* were liable. In a subsequent case, however, it was held that an indictment would lie under 41 & 42 Vict. c. 77, s. 10, against an urban sanitary authority acting as the highway authority for non-repair of a highway, for the section in question provides a statutory mode of raising the question of a highway authority's liability to repair. *Reg. v. Wakefield (Mayor, &c., of)*, 20 Q. B. D. 810 ; 57 L. J. M. C. 52 ; 36 W. R. 911 ; 52 J. P. 422.

Trustees under a local Act were held not to be liable to be indicted for manslaughter for the death of a person in consequence of an accident caused by the non-repair of the road which they were bound to repair under the Act. *Reg. v. Pocock*, 17 Q. B. 34.

Where a local authority are acting as surveyors of highways, and by so doing occasion damage to any person, they are not liable to compensate such person under section 308, *post*. In *Burgess v. Northwich Local Board*, 6 Q. B. D. 264 ; 50 L. J. Q. B. 219 ; 44 L. T. (N.S.) 154 ; 29 W. R. 931 ; 45 J. P. 256, it appeared that a roadway had subsided on account of the abstraction of salt from under it, and the houses abutting on it had subsided also. The surface of the roadway remained continuous, so that traffic could pass along it as before, but the roadway was in a curved hollow, and at the level to which it had subsided was liable to be flooded so as to render traffic impossible. The defendants placed materials on the roadway, so

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as to make the surface immediately above the point of the lowest subsidence about 4 feet higher than at the commencement of the work. The plaintiffs having raised their houses simultaneously with the works to the roadway claimed compensation. It was stated as a fact in the case that, having regard to the obstruction to traffic caused by floods, the raising of the road was reasonably necessary to put it in a proper state for traffic; but excluding the consideration of the floods, the raising of the road to the extent described was not necessary to put the road into a proper state for traffic. It was held that, as the highway was vested in the defendants (section 149, *post*), no action of trespass could have been maintained by the plaintiffs, even if more materials had been placed in the roads than a surveyor of highways could justify, and that the plaintiffs had no right to have the road maintained at the level at which it accidentally and recently sank; and that the works of the defendants were not done "in exercise of any of the powers" of the Act within section 308, which mean powers created by the Act, and not merely powers transferred by section 144 from the surveyor to the local board, but were done, if not entirely in pursuance of their duty as surveyors of highways, at all events in exercise of such powers as surveyors of highways have, and consequently that the plaintiffs were not entitled to compensation. This decision seems to follow a *dictum* of BRAMWELL, L.J., in *Nutter v. Accrington Local Board*, *post*, p. 173. In a recent case, where a road had subsided and a restoration of the road to some extent had taken place not long afterwards, and forty years afterwards the road was raised, BOWEN, L.J., held that the burden of proof was upon the local board to show that they had simply restored the road to its original level, and in the absence of evidence, held that they were acting under the powers given by the Public Health Act, and liable to make compensation accordingly. *Pearsall v. Brierley Hill Local Board*, 11 Q. B. D. 735; 52 L. J. Q. B. 529; 49 L. T. (N.S.) 486; 32 W. R. 141; 47 J. P. 628; affirmed in the House of Lords, 9 App. Cas. 595; 54 L. J. Q. B. 25; 51 L. T. (N.S.) 577; 33 W. R. 56; 49 J. P. 84.

The court will not grant an injunction to restrain a local board from removing an enclosure of the highway which amounts to a nuisance, if it is proved that the part enclosed is part of the highway. *Semble*, that the board have power as surveyors of highways to remove an obstruction after it has been judicially determined that there is an obstruction. *Bagshaw v. Buxton Local Board*, 1 Ch. D. 220; 45 L. J. Ch. 260; 34 L. T. (N.S.) 112; 24 W. R. 231; 40 J. P. 197.

The plaintiffs, who were a local board, brought an indictment against the defendants for interfering with and obstructing a public road. At the trial of the indictment, an agreement for compromise was made between the solicitors of both parties, and sanctioned by the judge, and was afterwards confirmed by a deed executed by the plaintiffs and defendants. By this deed the defendants covenanted to restore the road, which they had broken up, within seven years, and the plaintiffs covenanted that, when that had been done, they would consent to a verdict of "not guilty" on the indictment. The defendants failed to restore the road, and the plaintiffs then brought an action on their covenant, claiming specific performance and damages:—Held (affirming the judgment of STIRLING, J.), that as the indictment was for a public injury, the agreement to consent to a verdict of "not guilty" was against public policy and illegal, and the plaintiffs could not maintain an action on the defendants' covenant. The action was, therefore, dismissed. The court maintained the view taken in *Keir v. Leeman*, 9 Q. B. 371, and refused to follow the *dictum* of JAMES, L.J., in *Fisher and Company v. Apollinaris Company*, 10 Ch. D. 302; *Windhill Local Board v. Vint*, 45 Ch. D. 351; 59 L. J. Ch. 608; 63 L. T. (N.S.) 366; 38 W. R. 438; 6 T. L. R. 436.

The plaintiffs, a gas company, laid down pipes under the surface of certain streets, as they were bound by statute to do, for the purpose of supplying gas to light the streets and houses in the streets. The streets were vested in the defendants, the vestry of the parish, by certain statutes which gave them the authority of the surveyor of highways, and with the duty to repair, but without prescribing any particular mode of repair. The defendants used steam rollers for the repair of the streets, as being a mode of repair most advantageous to both the ratepayers and the public, but the rollers they used were so heavy as to frequently injure the plaintiffs' pipes, though the pipes were sufficiently below the surface as not to have been injured by the ordinary mode of repair if such rollers had not been used. It was held that the plaintiffs were entitled not only to recover damages for the injury which had been done, but also to have an injunction to restrain the defendants from using steam rollers in such a way as to injure the pipes of the plaintiffs. *Gas Light and Coke Company v. St. Mary Abbots, Kensington (Vestry of)*, 15 Q. B. D. 1; 54 L. J. M. C.

Note to 414; 53 L. T. (N.S.) 457; 33 W. R. 892; 49 J. P. 469; and see *Gas Light and Coke Company v. St. George's, Hanover Square*, 3 T. L. R. 581.

Section 144. With reference to the powers and duties of an urban authority in stopping up highways, reference may be made to *United Land Company v. Tottenham Local Board*, 13 Q. B. D. 640; 53 L. J. M. C. 136; 51 L. T. (N.S.) 364; 37 W. R. 798; 48 J. P. 726. There it was held that the charges of a solicitor employed by an urban authority to conduct proceedings at the instance of an individual for the stopping up or diverting of a highway under 5 & 6 Will. 4, c. 50, ss. 84, 85, are not "expenses" within the meaning of section 84 of that Act so as to be recoverable in manner pointed out by section 101. And *semble*, that all the steps required by section 85 to be taken for the purpose of obtaining the order of sessions, are ministerial acts which ought to be done by the surveyor of the urban authority appointed under section 108, *post*.

The local board have not, as surveyors of highways, any authority over turnpike roads. Per BRAMWELL, B., in *Nutter v. Accrington Local Board*, 4 Q. B. D. 375. And see section 148, *post*, and *Lancashire Justices v. Rochdale (Mayor of)*, cited in the notes thereto.

It had been held that an action against a local authority as surveyors of highways may be commenced within the six months allowed by section 264, and need not be commenced within the three months prescribed by 5 & 6 Will. 4, c. 50, s. 109. *Taylor v. Meltham Local Board*, 47 L. J. C. P. 12. In another case a local board in repairing a road negligently left a heap of stones upon it, whereby injury was caused to the plaintiff, it was held that the board were acting under the Public Health Act, 1875, and not under 5 & 6 Will. 4, c. 50, and that the period of limitation was, therefore, six and not three months. *Kay v. Atherton Local Board*, 42 J. P. 792. But when a corporation were made surveyors of highways by a local Act which made them subject to all such liabilities as any surveyors of highways were subject to by virtue of the law for the time being in force, and there was nothing to show that the corporation were acting under the Public Health Act, it was held by CAVE, J., that the period of limitation was three and not six months. *Burton v. Corporation of Salford*, 11 Q. B. D. 286; 31 W. R. 315; 52 L. J. Q. B. 668; 49 L. T. (N.S.) 43; 47 J. P. 614. This case was followed in *Graham v. Newcastle-upon-Tyne (Mayor, &c., of)*, No. 2 [1893], 1 Q. B. 643; 62 L. J. Q. B. 315; 69 L. T. (N.S.) 6; 41 W. R. 424; 57 J. P. 596; 4 R. 358, and the cases of *Taylor v. Meltham Local Board* and *Kay v. Atherton Local Board* were expressly overruled, it being held that an urban authority constituted the surveyor of highways by section 144 of the Public Health Act, 1875, was not liable to be sued for negligence in the management of highways unless the action be commenced within three months under section 109 of the Highways Act, 1835, and not if it be commenced only within six months under section 264 of the Public Health Act, 1875. However, section 264 of this Act and section 109 of the Highways Act, 1835, are now repealed by section 2 of the Public Authorities Protection Act, 1893, *post*, 56 & 57 Vict. c. 61, and by section 1 of the same Act a period of six months' limitation next after the act, default, or neglect complained of, or in the case of a continuance of injury or damage, six months next after the ceasing thereof, is made generally applicable.

As to the discretion of a local board as surveyors of highways when it is sought to make a road in their district a public highway, see *Reg. v. Dukinfield*, *post*, p. 200.

(c) The chief of these are 5 & 6 Will. 4, c. 50; 4 & 5 Vict. c. 51; 8 & 9 Vict. c. 71; 25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101; 28 & 29 Vict. c. 107; 41 & 42 Vict. c. 77; 45 & 46 Vict. c. 27; 54 & 55 Vict. c. 63.

The provisions for making highway rates are contained in sections 216, 217, *post*.

(d) By 5 & 6 Will. 4, c. 59, s. 29, the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, at a meeting specially called for that purpose, is necessary before the highway rate may exceed 2s. 6d. in the pound on the whole in any one year. It was held that this section was impliedly repealed by the provisions in the text in the case of a highway rate made by an urban authority under this Act. *Dyson v. Greetland Local Board*, 47 J. P. 260; 48 L. T. (N.S.) 636, affirmed in C. A.; 13 Q. B. D. 946; 53 L. J. M. C. 106; 48 J. P. 596. Having regard to section 25 of the Local Government Act, 1894, cited in note (a), it would seem that this decision will now apply also in the case of a highway rate made by a rural authority.

(e) This paragraph is new. It supplements the previous passage. As to its construction, see *United Land Company v. Tottenham Local Board*, *supra*.

145. The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district : (a) Provided that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor ; and the money so recovered shall be applied in the first place in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction ; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district. (b)

Section 145.
Inhabitants of urban district not liable to rates for roads without district.

As to the application of this section in rural districts, see section 25 of the Local Government Act, 1894, cited *ante*, p. 157, and *post*.

(a) See in section 216, *post*, the regulations applicable to parishes divided by the boundary of the urban sanitary district, whether in a highway district or out of it.

(b) As to which, see section 216.

146. Any urban authority may agree (a) with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly (b) become on completion, (c) highways maintainable and repairable by the inhabitants at large within their district ; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads. (d)

Power of urban authority to agree as to making of new public roads.

As to the application of this section in rural districts, see section 25 of the Local Government Act, 1894, cited *ante*, p. 157, and *post*.

(a) This agreement should be in writing and under seal. The section is incorporated from 21 & 22 Vict. c. 98, s. 39 ; but it is not quite easy to understand it. First, who is to make the road ? Apparently the urban authority. Yet it is provided that they may agree to pay the person a portion of the expenses of making the road. Moreover, when the road is to be made at his expense, it would be reasonable that he should make it.

It is presumed that the person referred to is the owner of the land.

The section appears to apply to new roads and not to existing roads.

(b) That is, in accordance with the agreement.

(c) See also *Sanders v. Brading Harbour Improvement Commissioners*, 52 L. T. (N.S.) 426, cited at length in the notes to section 152, *post*, p. 199.

In *Bromley Local Board v. Lansbury*, "Times," 5th December, 1894 ; 16 M. C. C. 574, a new road was laid out in 1878, and in 1884, buildings having been erected on each side of the road, an arrangement was made between defendant, who was one of the frontagers, and the plaintiff local board, that the new road should be made up to the satisfaction of the plaintiff's surveyor, and should be kept in repair by the frontagers for six months, and that the board should then adopt the road. This arrangement was carried out, but the plaintiffs did not, after the expiration of the six months, give the usual notice of adoption under section 152. Subsequently, in consequence of heavy traffic, the road fell into disrepair, and the plaintiffs paved the road under the provisions of section 150, *post*, and sought to recover a share of the expense from the defendant in the county court, where it was held, and affirmed on appeal by the High Court (GRANTHAM and LAWRENCE, JJ.), that the plaintiffs

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were bound by the arrangement come to in 1884, having accepted the work then done by defendant.

(d) It will be noted that the first agreement mentioned in the section may be made by the urban authority, and consequently by a mere majority of the board. But the latter agreement requires the consent of two-thirds of the members. The object of this is obviously to prevent jobbery in the matter.

Power of urban authority to construct or adopt public bridges, &c., over or under canals, &c.

147. Any urban authority may agree(a) with the proprietors of any canal, railway, or tramway to adopt and maintain any existing or projected bridge, viaduct, or arch within their district, over or under any such canal, railway, or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge, viaduct, or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge, viaduct, or arch at the expense of such proprietors;(b) they may also with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge, viaduct, or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto.(c)

As to the application of this section in rural districts, see section 25 of the Local Government Act, 1894, cited, *ante*, p. 157, and *post*.

(a) This section is re-enacted from 21 & 22 Vict. c. 98, s. 40. It is not easy to see how the urban authority can adopt a *projected* bridge; but doubtless it means that if the projected bridge be made the local authority may adopt it afterwards.

(b) In this case the urban authority may construct the bridge and then claim payment of the expenses from the proprietors, but in the agreement other provisions may doubtless be made.

(c) Note the same difference as in the last section, note (d) with reference to the entering into these agreements.

See the provisions of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), s. 3, in the Appendix, *post*. That section enables a local authority to agree with any other local authority or county council for the construction, re-construction, alteration, or improvement, or the freeing from tolls of any main road, or other highway or of any bridge within the jurisdiction of any of the parties to the agreement.

Power of urban authority to enter into agreements with turnpike trustees as to repair, &c., of roads.

148. Any urban authority may by agreement(a) with the trustees of any turnpike road, or with any person liable to repair any street or road, or any part thereof, or with the surveyor of any county bridge,(b) take on themselves the maintenance, repair, cleansing, or watering of any such street or road or any part thereof,(c) or of any road over any county bridge, and the approaches thereto,(d) or of any part of the said streets or roads within their district, and may remove any turnpike gates, toll gates, or bars which may be situated within their district,(e) and may erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the urban authority and such trustees or person or surveyor as aforesaid may agree on :

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorised by this Act.(f) Section 148.

Any executors, administrators, guardians, trustees, or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.(g)

(a) See as to this, section 146, *ante*, p. 165. Turnpike trusts are now practically obsolete, there remaining in existence only the trust comprising the Anglesey portion of the Shrewsbury and Holyhead road, which was extended by the Shrewsbury and Holyhead Road Act, 1890, until the 1st November, 1895. (22nd Ann. Rep. L. G. B., p. clxxvi.)

An agreement made before 31st December, 1870, under the corresponding section of the Act of 1858, does not prevent the roads from being turnpike roads within the meaning of the Highway Act, 1878, s. 13. *West Riding JJ. v. Reg.*, 8 App. Cas. 781; 32 W. R. 253; 53 L. J. M. C. 41; 49 L. T. (N.S.) 786; 48 J. P. 228.

An agreement was made between two urban authorities, whereby the one was to transfer to the other certain land forming part of its district, and the other was to adopt a road and dedicate it as a public highway. It was held that such a contract was not authorised by the text. *Tunbridge Wells Improvement Commissioners v. Southborough Local Board*, 60 L. T. (N.S.) 172; W. N. (1888), p. 237; 5 T. L. R. 107.

The turnpike trusts shall continue in force as to turnpike roads within an urban sanitary district. Per Lord BLACKBURN in *Lancashire JJ. v. Rochdale (Mayor of)*, 8 App. Cas., at p. 497; 53 L. J. M. C. 5; 49 L. T. (N.S.) 368; 32 W. R. 65; 48 J. P. 20. In that case the corporation of Rochdale was the highway authority within the area of the borough. Under sections 47—50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the obligation to repair all public highways within the area of the town was imposed upon the corporation, and the turnpike trustees were forbidden to lay out any money on any road within that area. By a local Act in 1872 the boundaries of the borough were enlarged, and all the provisions of the Act relating to the town were extended to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough and within the operation of 10 & 11 Vict. c. 34, ss. 47—50. It was held by the House of Lords that these further portions, being only parts of turnpike roads, had not “ceased to be turnpike roads,” and were not to be deemed to be “main roads” within section 13 of the Highways and Locomotives (Amendment) Act, 1878; and that the county authority were not liable to pay half the expenses of their maintenance.

By a local Act passed in 1855, and incorporating the Towns Improvement Clauses Act, 1847, the maintenance of all highways within a district, including a turnpike road, became vested in the commissioners. The trustees of the turnpike road thereupon ceased to repair it within the limits of the district. The turnpike trust expired in 1877. The commissioners were the highway authority for the district, which was a highway area within the Highway Act, 1878 (41 & 42 Vict. c. 77), s. 13, *post*. It was held that, notwithstanding the special legislation in 1855, providing for the maintenance of part of the road by the commissioners, it only ceased to be a turnpike road within the meaning of 41 & 42 Vict. c. 77, s. 13, on the expiration of the turnpike trust between 1870 and the date of the passing of that Act, and therefore should be deemed to be a main road, and one-half of the expenses of the maintenance of the part within the highway area should be paid to the highway authority by the county authority. *Newton-in-Makerfield Improvement Commissioners v. Lancashire JJ.*, 15 Q. B. D. 25; 54 L. J. M. C. 1; 52 L. T. (N.S.) 337; 33 W. R. 488; 49 J. P. 149.

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(b) The surveyor is substituted for the clerk of the peace, who usually represents the county in agreements. The surveyor must charge the county rate, but cannot properly do so without the direction of the county justices, for whom he must act in the matter.

It may here be mentioned that a bridge which is not a county bridge is a street, as defined by section 4, *ante*, p. 12.

Where, under their special Act, a railway company are bound to make a bridge over the railway to carry a highway, they are bound under 8 & 9 Vict. c. 20, s. 46, to keep the surface of the highway over the bridge in repair as being a necessary part of the bridge. *Lancashire and Yorkshire Railway Company v. Bury (Mayor, &c., of)*, 14 App. Cas. 417; 59 L. J. Q. B. 85; 61 L. T. (N.S.) 417; 54 J. P. 197. But when the railway is carried over a highway the company are not bound to repair the highway under the bridge, even though it has been lowered in order to give headway under the bridge. *London and North-Western Railway Company v. Skirton*, 5 B. & S. 559.

The provisions of this section might apply to the towing-path of a canal. Such a towing-path may be dedicated as a highway. *Grand Junction Canal Company v. Petty*, 21 Q. B. D. 273; 57 L. J. Q. B. 572; 36 W. R. 795; 52 J. P. 692; 59 L. T. (N.S.) 767.

(c) In *Nutter v. Accrington Local Board*, 4 Q. B. D., at p. 380, MELLOR, J., expressed an opinion that these words did not authorise the division of the road into longitudinal sections, so that the local board should undertake the charge of the footpath, and the turnpike trustees that of the roadway. But at p. 383, COTTON, L.J., expressed a contrary opinion.

(d) A bridge may be a county bridge, though repairable by the inhabitants of a county or by an individual. *Reg. v. Chart and Longbridge*, L. R. 1 C. C. R. 237; 39 L. J. M. C. 137; 22 L. T. (N.S.) 416; 18 W. R. 791; 34 J. P. 454. In general, however, a county bridge is repairable by the inhabitants of the county. 5 & 6 Will. 4, c. 50, s. 21, provides that if any bridge shall thereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless that nothing therein contained shall extend to, or be construed to extend to, exonerate or discharge any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge on the land arches thereof. The way over a bridge built before the passing of this Act, and the approaches for a distance of 300 feet from each end of such bridge, are repairable by the county. See 22 Hen. 8, c. 5, s. 7. "Where for any reason a public bridge is not considered a county bridge, and no other persons are by usage or prescription or statute bound to repair it the liability falls upon the inhabitants of the parish in which it is situate as being a public highway." ("Pratt's Law of Highways," 12th edit., by Prentice, p. 38.) 33 & 34 Vict. c. 73, s. 12, provides that where a turnpike road shall have become an ordinary highway all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: Provided that for the purposes of that Act such bridges shall be treated as if they were bridges built subsequently to the passing of 5 & 6 Will. 4, c. 50. This section was discussed in *Reg. v. Dorset (Inhabitants of)*, 45 L. T. (N.S.) 308. There a toll bridge was built over the B. river at W. for the purpose of connecting the back streets of W. with the country districts on the other side of the river. A turnpike road was made in connection with the bridge; both the bridge and the road were constructed under one Act. There were separate trusts of the bridge and the road, but the trustees of the one were trustees of the other. The bridge was within the municipal boundaries of the borough of W. On the expiration of the trust the county repaired the road, but the bridge was allowed to fall into disrepair. The county of D., in which the bridge was situated, was thereupon indicted for its non-repair and was found guilty:—Held, upon the argument for a new trial, that the county was rightly convicted, and that, as there was nothing in the case to cast the liability to repair on the borough in which the bridge was situated, on the expiration of the period of the trust it became a county bridge repairable by the inhabitants of the county.

(e) These words remove the difficulty as to the measure of distance which occurred in 21 & 22 Vict. c. 38, s. 41.

(f) See sections 233 *et seq.*, *post*.

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(g) 23 & 24 Vict. c. 68, s. 20, enabled the highway boards in South Wales to contract with the local board of health under the Public Health Act (21 & 22 Vict. c. 98), for the repair of any highway under the care of such local board, who had all the responsibility of such repair, and the board contracted with was to be relieved therefrom during the pendency of the contract. The money to be paid under the contract was to come from the moneys applicable to the repair of such highways by the highway board. The urban authority is now substituted for such local board. And by section 25 of the Local Government Act, 1894, *post*, the rural authority is now substituted for the highway board.

Regulation of Streets(a) and Buildings.

149. All streets,(b) being or which at any time become highways Vesting of streets, &c., in urban authority.
repairable by the inhabitants at large(c) within any urban district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.(d)

The urban authority shall(e) from time to time cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired, as occasion may require; they may from time to time cause the soil of any such street to be raised, lowered, or altered, as they may think fit;(f) and may place and keep in repair fences and posts for the safety of foot passengers.(g)

Any person who without the consent of the urban authority wilfully displaces or takes up,(h) or who injures the pavement, stones, materials, fences, or posts of, or the trees,(i) in any such street, shall be liable to a penalty(k) not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement, stones, or other materials, so displaced, taken up, or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

(a) It is proper here to refer to 33 & 34 Vict. c. 78 (The Tramways Act, 1870), as it contains provisions whereby a local board may be enabled to construct and maintain a tramway within their district. Their consent is also necessary to enable other persons to obtain a provisional order under the Act, unless such consent is dispensed with by the Board of Trade. The Act also contains important provisions as to the right of a tramway company to interfere with roads, sewers, &c., for the purchase of the undertaking by the local authority, &c.

See also the Gas and Waterworks Facilities Acts, 1870 and 1873 (in the Appendix), as to the necessity for the consent of the local authority for a provisional order under these Acts.

See also the provisions of the Acts relating to the use of locomotives on public roads, 24 & 25 Vict. c. 70; 28 & 29 Vict. c. 83 [continued by several statutes, and lastly by the Expiring Laws Continuance Act, 1894 (57 & 58 Vict. c. 48)], and 41 & 42 Vict. c. 77, Part 2.

(b) See the definition of *street* in section 4, *ante*, p. 12. See also the notes to section 144, *ante*, p. 157, and note (a) to the next section, *post*, p. 176.

(c) Before 1836 any road which was dedicated to the public and used by them became a highway repairable by the inhabitants at large. *Reg. v. Westmark*, 2 M. & Rob. 305; and see per BLACKBURN, J., in *Reg. v. Dukinfield*, 32 L. J. M. C. 230; 4 B. & S. 158; 27 J. P. 805. And see *Eyre v. New Forest Highway Board*, 56 J. P. 517. In that year, however, the Highway Act, 1835 (5 & 6 Will. 4, c. 50), came into operation, and section 23 of that Act prescribes certain formalities which must be complied with before a landowner can dedicate a road so as to make it repairable by the public. But a road may be none the less a highway, because the public are not bound to repair it. This was held in *Roberts v. Hunt*, 15 Q. B. 17. A road which has been

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dedicated since 1836, but with respect to which the formalities prescribed by section 23 of the Highway Act, 1835, have not been complied with, is not within this section, and the owners of adjoining property may be compelled to pave, &c., it under section 150, *post*. As to the application of section 23 to a road in an urban district, see *Reg. v. Dukinfield, post*, p. 200.

The duty of repairing streets which are public highways is imposed on the urban authority by section 144, *ante*, p. 157. This Act contains no section like section 53 of the Towns Improvement Clauses Act, which empowers the authority, when that section is in force, to charge the cost of the repairs of a public highway upon the adjoining owners. That section, however, has been held only to apply when the highway has never previously been paved, &c. See *Reg. v. Great Western Railway Co.*, 28 L. J. M. C. 246; 1 E. & E. 806; 5 Jur. (n.s.) 1054. As to the recovery of expenses under that section as incorporated by a local Act, see *Portsmouth (Mayor of) v. Smith*, 46 J. P. 23.

It has been held under 18 & 19 Vict. c. 120, s. 96, that a metropolitan vestry are bound to repair the pavement over vaults and cellars, although by section 102 of that Act, the vaults, &c., and the openings into them are to be repaired by the owners of them. *Hamilton v. St. George's, Hanover Square (Vestry of)*. L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 29 L. T. (n.s.) 428; 22 W. R. 86; 38 J. P. 405.

As to the meaning of the words "repairable by the inhabitants at large, see the next section, note (b), *post*, p. 181.

(d) The words *shall vest in* are future in signification, but as a similar provision was contained in previous Public Health Acts, the effect of the words in question is merely to continue the state of things which at the time of the passing of the Act existed in districts already constituted (see section 326, *post*). But while the property mentioned in the section passed to the local authority, it must be remembered that all outstanding liabilities also passed (see section 12, *ante*, p. 30). The meaning of the words "vest in" will appear from the following cases:—

In *Hind v. Chorlton*, L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* as used in a local Act, said: "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey v. Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97, it was provided by an Act that certain lands should be *vested in* the commissioners of sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold, passed to them." In *Bagshaw v. Buxton Local Board*, 1 Ch. D., at p. 222, JESSEL, M.R., said that by the term *vested* he meant *vested sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street. *Coverdale v. Charlton*, 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. (n.s.) 88; 26 W. R. 687; 43 J. P. 268. In that case by an award made under an Inclosure Act passed in 1766, two private roads, E. and H., were set out. About 1818 the road E. became a public highway. Down to 1863 the surveyor of highways for the parish of C., within which E. and H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a private way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in*, as follows.—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on, and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited

extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public." *Rolls v. St. George the Martyr, Southwark (Vestry of)*, 14 Ch. D. 785; 49 L. J. Ch. 691; 43 L. T. (N.S.) 140; 28 W. R. 867; 44 J. P. 680. In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets, N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N. nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision of the Master of the Rolls, that under 18 & 19 Vict. c. 120, s. 96, all streets being, for the time being, highways, are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted, the interest of the vestry determines. And it was therefore held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street has been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 46—51, it was held that the vesting of the street in the vestry under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridge or its fences, but merely vested in them the carriageway and footpaths and the materials of which these were made. *Great Eastern Railway Company v. Hackney Board of Works*, *post*, p. 184. The vesting of the streets in the urban authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height and causing no appreciable danger to the public or to the traffic in the street. *Wandsworth District Board of Works v. United Telephone Company*, 13 Q. B. D. 904; 53 L. J. Q. B. 449; 51 L. T. (N.S.) 148; 32 W. R. 776; 48 J. P. 676. An injunction was granted to restrain the defendant, who claimed as owner of the subsoil of half the road, from interfering with poles and electric wires. It was held that assuming the defendant was owner of half the soil, yet the road being a street within the above section, the local board were entitled to more than the surface; they had an area of user necessary for the exercise of their statutory powers, *e.g.*, of lighting the district. *Fareham Local Board v. Smith*, W. N. (1891), p. 76; 7 T. L. R. 443; 90 L. T. 467. As to the construction by the local authority of a urinal partly below the level of the street see *Baird v. Tunbridge Wells (Mayor, &c., of)*, cited at length in the notes to section 39, *ante*, p. 67.

As to how much of a main road vests in a county council under section 11 of the Local Government Act, 1888, see *Curtis v. Kesteven County Council*, 45 Ch. D. 504; 60 L. J. Ch. 103; 63 L. T. (N.S.) 543; 39 W. R. 199. It may here be mentioned that, notwithstanding the text, a road in an urban district which is a main road will vest in the county council under 51 & 52 Vict. c. 41, s. 11, sub-sect. (6), unless the urban authority have elected to retain the control of main roads in their district. See the section, *post*.

It seems to be doubtful whether the vesting of the street in the urban authority gives the authority any property in trees in the street other than those planted by them. See per BRAMWELL, L.J., in *Coverdale v. Charlton*, *supra*. But it is presumed that the vesting of the street will extend to the entire highway which the public have the right to use, and that includes not only the *via trita* but to the entire space between the fences dedicated to the use of the public and capable of being used by them. See on this subject *Reg. v. United Kingdom Telegraph Company*, 3 F. & F. 73; 9 Cox C. C. 144, 174; 31 L. J. M. C. 166; 2 B. & S. 647; 6 L. T. (N.S.) 378; *Turner v. Ringwood Highway Board*, L. R. 9 Eq. 418; 21 L. T. (N.S.) 52; 18 W. R. 745; *Nicol v. Beaumont*, 53 L. J. Ch. 853; 50 L. T. (N.S.) 112.

It has been decided that a rentcharge issuing from lands adjoining certain roads, and granted at a time when the roads were private occupation roads in respect of the use of such roads, and the use of a sewer laid down in one of them, is not determined by the roads becoming highways repairable by the inhabitants at large and the sewer

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It is enacted by section 27 of the Highways and Locomotives (Amendment) Act, 1878 (in the Appendix), *post*, that notwithstanding anything contained in section 68 of the Public Health Act, 1848, or in section 149 of the Public Health Act, 1875, all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway. This section extends to the Isle of Wight and South Wales. As to the rights of the local authority under the latter part of this section, see *Attorney-General v. Conduit Colliery Company* [1895], 1 Q. B. 301; 64 L. J. Q. B. 207; 71 L. T. (N.S.) 771; 43 W. R. 366; 59 J. P. 70; 11 T. L. R. 57.

(e) The keeping of the street in repair is imperative. It is doubtful whether the neglect to repair the highways is a default within section 299, *post*, but as by section 144, *ante*, p. 157, the urban authority are the highway authority within their district, proceedings to compel repairs may be taken under the Highway Acts.

(f) The principle established by *Bolton v. Crowther*, 2 B. & C. 703, is, that where the public commissioners have conferred upon them by statute powers to effect works for the public good, they are not personally responsible for the damage which they cause to private individuals in the due and careful exercise of those powers. That case was decided with reference to the General Turnpike Act (3 Geo. 4, c. 126), section 83 of which authorised the trustees to divert, shorten, alter, or improve the course or path of any of the roads under their management, and to divert, &c., any roads through or over any private lands, tendering or making satisfaction to the owners thereof and persons interested therein for the damage sustained thereby. It was held that under this clause the trustees were authorised to lower hills and raise hollows, and that the trustees were not liable to an action for consequential injury resulting from their altering the level of a road opposite the entrance to certain premises. So where a local Act empowered a town council to alter the level of any street, it was held that they had not exceeded their powers by erecting a bridge in the line of a street over a canal. *Beaver v. Mayor, &c., of Manchester*, 8 E. & B. 44; 4 Jur. (N.S.) 23; 26 L. J. Q. B. 311. In another case where an action was brought against a local board for lowering a highway and thereby obstructing the access to a house, the court held that the plaintiff had no right of action. *Bold v. Williams*, 21 J. P. 84. In *Wedmore v. Bristol*, 7 L. T. (N.S.) 459, an injunction to restrain the raising of a footway was refused though damage was shown, there being statutory power to alter the level of the footpath. And see *Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. (N.S.) 295; 17 W. R. 709. Section 308 of this Act provides, however, for the payment of compensation for injuries sustained by persons in consequence of the exercise of the powers conferred by this Act. Therefore, where on the owner's default the board executed works under section 150, *post*, p. 176, and in so doing altered the level of the street so as to make the access to one of the houses in the street difficult and dangerous, it was held that though the owner of the house was liable to pay his proportion of the expenses, he was nevertheless entitled to compensation under 11 & 12 Vict. c. 63, s. 144 (corresponding to section 308, *post*), for the special damage he had sustained in order that his neighbours and the district generally might be benefited. *Reg. v. Wallasey Local Board*, L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 17 W. R. 766; 21 L. T. (N.S.) 90; 33 J. P. 677; 10 B. & S. 428. Abutting upon a highway the plaintiff had land upon which an inn and some stabling had been erected. These stood back from the highway, and in front of them was an open space forming part of the same land, which had been left open to and on a level with the highway until the defendants in exercise of their powers under this section and for the convenience of the public placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's land and premises. It was held that the plaintiff was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct the remedy for any injury caused by the kerbstones would be by compen-

sation under section 308. *Sellors v. Matlock Bath Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 782.

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But the urban authority will not be permitted in every case to alter the level of a street so as to cause unnecessary damage. The R. local board in repairing and improving a road raised a footpath by the side of a road a few inches, the effect of which was to prevent water which fell upon the space between a warehouse of the plaintiff, in which needles were stored, and the road from draining into the road. On bill filed by the plaintiff against the local board for an injunction, it was held that they had no right to make improvements in a way calculated to cause unnecessary damage to the plaintiff, that the evil complained of was one of easy remedy, and that the case was not one for pecuniary compensation; and a mandatory injunction was granted to prevent the board from allowing such water to remain dammed up to the injury of the plaintiff. *Milward v. Redditch Local Board*, 21 W. R. 429. And see *Shill v. Gloucestershire County Council*, "Times," October 30th, 1893; 15 M. C. C. 454.

The footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees (see section 148, *ante*, p. 166), so as to raise the level of the footpath in front of the house of the plaintiff and cause him damage. It was held by BRETT and COTTON, L.JJ., reversing the judgment of the Queen's Bench Division (BRAMWELL, L.J., dissenting), that a street which is also a turnpike road is not excluded by the definition (see section 4, *ante*, p. 12) from the operation of the section in the Act of 1848 (11 & 12 Vict. c. 63, s. 68) corresponding to that in the text, and that the plaintiff was therefore entitled to receive compensation under section 144 of that Act. *Nutter v. Accrington Local Board*, 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802; 43 J. P. 635, affirmed in H. L. 43 L. T. (N.S.) 710. (And see also as to a turnpike road being a street, *Thomas v. Roberts*, 43 J. P. 574.) In the *Accrington Case* just referred to the majority of the court did not enter into the consideration of whether the alteration which had been effected had been done in pursuance of this section. They assumed that it had. But in the judgment of the dissentient judge, BRAMWELL, L.J., it was pointed out that had the act complained of been done by the turnpike trustees, no action would have lain against them on the principle established in *Bolton v. Crouther*, *supra*. "And," he continued, "usually, a person cannot raise or lower a road in front of another man's park gate, and so leave his park gate high up in the air, or below the level of the road; because any person having the right is not likely to interfere with the level of the road. But supposing that the owner of property adjoining a highway is not the owner of the soil in the highway, I do not think he has any right by the law of the land to have the road continued at a particular level. It may be a great inconvenience to him, no doubt, to have the road altered if he has built with reference to the level of the road; but it may be an inconvenience to the public not to have the road altered, and I do not know that he has any vested right in the road remaining at that level to the inconvenience of all mankind." In every case, therefore, where compensation is claimed it becomes material to consider whether the act causing the injury has been done pursuant to this section, or whether it is such an act as might be justified by the board under their general powers as surveyors of highways. In *Taylor v. Meltham Local Board*, *ante*, p. 164, the court held that an act done by the board as surveyors of highways was done pursuant to the Public Health Act, which conferred on the board the powers of surveyors of highways; and in *Kay v. Atherton Local Board*, *ante*, p. 164, the court expressed the same opinion. But see, on the other hand, *Burgess v. Northwich Local Board*, *Pearsall v. Brierley Hill Local Board*, *ante*, pp. 162, 163, and *Graham v. Newcastle-upon-Tyne (Mayor, &c., of)*, *ante*, p. 164.

The 55th and 56th sections of a local Act for the improvement of a township enabled the commissioners executing the Act to pave in a sufficient manner, on default of the owners or occupiers for six months after notice requiring them to do so, "the public streets, ways, and passages within the said township which are now built upon, but not made, paved, flagged, cleansed, or otherwise put into good order and condition, and all such other streets, &c., which are now making or being built upon, or may hereafter be made, laid out, or built upon or such thereof respectively as may require the same." The 56th section empowered the commissioners, after such street should have been completed as to paving, &c., and the owners should have paid the expenses, to declare them highways. The 53rd section empowered and required the commissioners to cause the present and future streets to be paved, &c., and the ground or soil thereof to be raised, lowered, or altered from time to time in

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such manner and with such materials as the commissioners should think fit. The 54th section enabled the commissioners to declare new streets to be highways, provided they were of certain width. The Act did not contain a clause giving compensation for damages occasioned by the exercise of the powers conferred by the 53rd section. It was held that the general powers conferred by the 53rd section were to be exercised for the repair only of pavements in old streets and streets declared to be highways under the Act; that they were inconsistent with the specific powers conferred by the 55th and 56th sections; and that the lowering of the ground or soil of the street described in sections 55 and 56 was an act of trespass not to be justified under the 53rd section. *Brown v. Clegg*, 16 Q. B. 681; 15 J. P. 609.

By section 15 of a local Act, the local board were directed to cause offensive ditches to be cleansed, covered, or filled up; and section 16 empowered them to cause the ditches at the sides of or across public roads to be filled up, and to substitute pipe and other drains, and from time to time to amend the same; and the surface of the land gained by filling up such ditches might, if the board thought fit, be thrown into the roads and ways, and be repairable as part thereof. The plaintiff was owner of a close adjoining a public highway, and between the close and the highway was a strip of land averaging nine feet in width. Upon the strip of land ran a ditch, the bank of which, on the plaintiff's side, was 3 feet in width, and covered with grass, and the bank on the roadside was one foot in width, and covered with grass. At the side of the road were posts and rails above 2 feet high. The plaintiff and his predecessors had usually repaired the posts and rails, but on two or three occasions the surveyors of the highways and the local board had repaired them without the plaintiff's knowledge. The board having removed the posts and rails, and covered the ditch, it was held that they had no power to do so, the ditch not being at the side of a public road within section 16, and presumably belonging to the plaintiff as the owner of the adjoining land. *Tutill v. West Ham Local Board*, L. R. 8 C. P. 447; 28 L. T. (N.S.) 597; 37 J. P. 455.

A public body, with statutory powers to stop up, alter, or use for the purpose of the authorised works, certain specified streets, were restrained by injunction from interfering, in excess of their powers, with the cellar of a house in one of the streets, the roadway in which was being lowered, until the amount of compensation for the whole house should have been ascertained and paid. An inquiry as to the damages sustained by the plaintiffs, the owner and the occupier of the house, by reason of the works commenced by the defendants, having been directed by the decree, it was held that the plaintiff was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorised act of lowering the roadway, but only for direct structural injury occasioned by the unauthorised interference with his cellar. *Bigg v. Corporation of London*, L. R. 15 Eq. 376; 28 L. T. (N.S.) 336; 37 J. P. 564.

(g) The owners of land adjoining a highway are not in general bound to fence them from the highway. Where a sewer belonging to the metropolitan commissioners adjoined a highway, it was held that they were not liable for an accident caused by its being unfenced. *Cornwall v. Metropolitan Commissioners of Sewers*, 10 Ex. 771; 3 C. L. R. 417; 19 J. P. 313.

This clause is permissive. No compulsion or duty is cast upon the urban authority by these words. Therefore, where a goit ran by the side of an ancient public footpath, it was held that the local board were not bound to fence the path from the goit to prevent accidents. *Wilson v. Halifax (Mayor, &c., of)*, L. R. 3 Ex. 114; 37 L. J. Ex. 44; 16 W. R. 707; 17 L. T. (N.S.) 660; 32 J. P. 230. By a local Act it was provided, that if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of any such land should, when required by the corporation and to their satisfaction, fence off the land from the street, and should afterwards keep such fence in repair. It was held that the Act did not apply to fences by the side of a road which had been a turnpike, but applied only to new streets where there were no fences, and which, in the opinion of the corporation, were dangerous to the public. *Rotherham (Mayor, &c., of) v. Fullerton*, 50 L. T. (N.S.) 364. And it has been decided that a duty is cast upon those who in the exercise of statutory powers divert a public footpath, to protect, by fencing or otherwise, reasonably careful persons using the footpath from injury through going astray at the point of diversion. *Hurst v. Taylor*, 14 Q. B. D. 918; 54 L. J. Q. B. 310; 33 W. R. 582; 59 J. P. 359.

(h) In general no person or company may take up or interfere with a highway so as to create a nuisance. See *Reg. v. Longton Gas Company*, 29 L. J. M. C. 118; 2 E. & E.

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651 ; 6 Jur. (n.s.) 601 ; 8 W. R. 293 ; 24 J. P. 214. See also *Ellis v. Sheffield Gas Consumers' Company*, 2 E. & B. 767 ; 23 L. J. Q. B. 42 ; 22 L. T. (o.s.) 84 ; *Pudsey Coal Gas Company v. Bradford (Mayor of)*, L. R. 15 Eq. 167 ; 42 L. J. Ch. 293 ; 28 L. T. (n.s.) 11 ; 21 W. R. 286 ; 37 J. P. 340 ; *Stockport Waterworks Company v. Corporation of Manchester*, 9 Jur. (n.s.) 266. It was there held that the taking up of the pavement and digging trenches in the roadway and footway of a public thoroughfare, in order to lay down service pipes for the supply of gas from mains to private houses, are not acts which can be justified at common law as done in the exercise of the right of every occupier of a house to make such a temporary obstruction of the highway, as may be necessarily incidental to the enjoyment of his property ; and a householder who authorises such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. Nor is the consent of the local authority under this section an answer to an indictment, for the power to consent is limited to works authorised by the Act. *Hawkins v. Robinson*, 37 J. P. 662.

But in *Edgware Highway Board v. Harrow District Gas Company*, L. R. 10 Q. B. 92 ; 44 L. J. Q. B. 1 ; 31 L. T. (n.s.) 402 ; 23 W. R. 90 ; 38 J. P. 806, the plaintiffs, a highway board, agreed with the defendants, a gas company, that if the plaintiffs should give the defendants a license to open a highway in their jurisdiction, the defendants should make good the surface of the road, and pay to the plaintiffs 1s. per yard of the highway so broken up. It was held that the contract was valid, for that the agreement of the plaintiffs to allow the defendants to interfere with the surface of the road was a good consideration, and the contract was not illegal, as it did not necessarily contemplate the creation of a nuisance by the defendants.

The Court of Chancery refused, however, to interfere by injunction where the injury done by the opening of the streets was temporary and trivial. *Attorney-General v. Sheffield Gas Consumers' Company*, 3 D. M. & G. 304 ; 22 L. J. Ch. 811 ; 17 Jur. 677 ; *Attorney-General v. Cambridge Consumers' Gas Company*, L. R. 4 Ch. 71 ; 38 L. J. Ch. 94, 107 ; 17 W. R. 145 ; 19 L. T. (n.s.) 508 ; 33 J. P. 147. An injunction was granted under the following circumstances :—The corporation of F., who had no parliamentary powers for the purpose, supplied water to the adjoining district of F., and claimed the right to enter upon and break up the streets of F. whenever occasion should require for the purpose of repairing their water pipes, relying, as regarded some of the streets, on alleged irrevocable licenses granted by the predecessors of the local board of F., i.e., the surveyors of highways, and as regarded other streets on prescription. It was held (1) that the claim of the corporation was to commit a nuisance ; (2) that it was not in the power of the surveyors of highways to grant the alleged licenses ; (3) that, therefore, as a grant could not be presumed, the corporation could not obtain the right claimed by prescription. *Preston (Mayor, &c., of) v. Fullwood Local Board*, 53 L. T. (n.s.) 718.

Where a company has a special Act, passed before this Act, the provisions in the text will not affect their powers. In *London and Blackwall Railway Company v. Limehouse District Board of Works*, 3 K. & J. 123 ; 26 L. J. Ch. 164 ; 28 L. T. (o.s.) 140 ; 20 J. P. 789, this general principle was laid down. When the legislature has vested special powers in a particular body for certain specified purposes, a general Act will not override those special powers ; thus a railway company were held to be empowered to build a station which abutted on a street in the metropolis, without the consent of the district board, their local Act, which preceded the Metropolitan Local Management Act, empowering them to do so. See also to the like effect *Goldson v. Buck*, 15 East, 372, and *Attorney-General v. Northern and Eastern Railway Company*, 10 M. & W. 263 ; 12 L. J. Ex. 106. For an instance of power under a special Act to break up pavements to lay gas pipes, see *Dover Gas Light Company v. Mayor, &c., of Dover*, 1 Jur. (n.s.) 812.

As to the right of a private individual to restrain the laying of pipes in a highway, the soil of which belongs to him, see *Goodson v. Richardson*, L. R. 9 Ch. 221 ; 43 L. J. Ch. 790 ; 30 L. T. (n.s.) 142 ; 22 W. R. 337 ; 38 J. P. 436. The urban authority have probably the same rights in respect of streets vested in them under this section.

See sections 153, 331, *post*, as to certain acts of interference with pipes, &c., authorised by this Act.

(i) The judgment of BRAMWELL, L.J., in *Coverdale v. Charlton*, *ante*, p. 170, leaves open the question whether a tree in a street vests in the local authority under this section. In the same judgment reference is made to trees planted by the local board, but it must not be assumed that the urban authority have power to plant trees, for

Note to Section 149. at an assize for Sussex the corporation of Lewes were indicted and convicted of a nuisance to the highway by planting trees in the street. See the "Times," 9th March, 1886. But in districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), has been adopted, the urban authority may plant trees (section 43), and may place in any street refuges, cabmen's shelters, and statues or monuments (sections 39, 40, 42). See these sections *in extenso, post*.

(k) As to the recovery of this penalty, see section 251, *post*.

Power to
compel
paving, &c.,
of private
streets.

150. Where any street(a) within any urban district (not being a highway repairable by the inhabitants at large)(b) or the carriageway, footway, or any other part of such street(c) is not sewered, levelled, paved, metalled, flagged, channelled, and made good or is not lighted(d) to the satisfaction of the urban authority,(e) such authority may, by notice addressed to the respective owners or occupiers(f) of the premises fronting, adjoining, or abutting(g) on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged, or channelled, or to be lighted, require them to sewer, level, pave, metal, flag, channel, or make good or to provide proper means for lighting(h) the same within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans, sections, and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.(i)

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein;(k) and may recover in a summary manner(l) the expenses incurred by them in so doing from the owners in default,(m) according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority,(n) or (in case of dispute) by arbitration in manner provided by this Act;(o) or the urban authority may by order declare the expenses so incurred to be private improvement expenses.(p).

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.(q)

The above section will not apply to a district in which the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), has been adopted. See that Act, *post*.

(a) STREET.—In discussing the definition of this term in section 4, *ante*, p. 12, it was pointed out as the result of recent decisions that the word "street," as used in this section, did not apply only to a street in the ordinary and popular sense, but had the wider meaning assigned to it by the interpretation clause. But the decisions have not been uniformly to this effect, and it may be useful to set them out in chronological order. In *Maude v. Baildon Local Board*, 10 Q. B. D. 394; 48 L. T. (N.S.) 874; 47 J. P. 644, the court held that the word "street" in this section was

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used in its ordinary sense of a road with houses more or less continuous. In *Portsmouth (Mayor, &c., of) v. Smith*, 13 Q. B. D. 184; 53 L. J. Q. B. 92; 50 L. T. (N.S.) 308; 48 J. P. 404, the Master of the Rolls questioned that decision, and pointed out that it had proceeded upon a mistaken view of *Reg. v. Dayman*, 7 E. & B. 672; 26 L. J. M. C. 128; 3 Jur. (N.S.) 744; 22 J. P. 39. And the court decided that the word street, as used in section 53 of the Towns Improvement Clauses Act, 1847 (which corresponds to the text), had to be interpreted according to the definition, and, therefore, include a highway which was not a street in the ordinary sense. In *Midland Railway Company v. Watton*, 17 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405, the court seems to have assumed that the word street as used in the text meant a street as defined by section 4. But in *Cleckheaton Local Board v. Burnup*, 50 J. P. 598, the court held that the section applied only to streets in the ordinary and natural meaning of that term; that in summary proceedings under the section it was for the justices, having regard to the surrounding circumstances and to whether there was any intention of building along a road so as to convert it into a street, to find, as a fact, whether the road in question is a street in the ordinary and popular sense of the term; that it made no difference that the section had been applied or might apply to a portion of the road other than that in question; and that where the justices find a road or a portion of a road is not a street in the ordinary and popular sense, they would be right in holding that the section was not applicable to the road or portion. All these cases were reviewed by STEPHEN, J., in *Jowett v. Idle Local Board*, 57 L. T. (N.S.) 928; 36 W. R. 138; and his judgment was affirmed by the Court of Appeal; W. N. (1888), p. 87; 36 W. R. 530. In that case the plaintiffs were owners of a private alley or court, upon which the defendants (the urban sanitary authority) had constructed a sewer and paved the roadway under this section. The said alley or court led from a highway to a mill, and the portion sewered and paved by the defendants was bounded on each side by cottages, or by gardens or yards belonging thereto, and was the only means of access to the said cottages, which were about twenty in number, and to the said mill. The owners and occupiers of the adjoining property were the only persons having rights of road over the said alley or court. The traffic in connection with the mill was very considerable. The plaintiffs having brought an action of trespass against the urban sanitary authority, it was held (upon a motion for a new trial, allowing the appeal) that the words in the definition of "street" in section 4 must be read into this section. It was also held that the question whether the said alley or court was a street or not, so as to come within the meaning of this section, was a question of law to be decided by the judge at the trial, and not a question for the jury; and that, upon the facts of this case, the alley or court in question was a street within the meaning of this section. In *Richards v. Kessick*, 57 L. J. M. C. 48; 59 L. T. (N.S.) 318; 52 J. P. 756, FIELD, J., after quoting the definition of a street in section 4, said: "On looking at the 150th section, I cannot understand how any doubt can have arisen as to reading this definition into it; but we have not to decide that point now, because in *Jowett v. Idle Local Board*, which is the last case on the point, it was decided that it must be read in." In the same case WILLS, J., said: "It was argued that section 4 should not be read with section 150, and the case of *Maude v. Baildon Local Board* was cited in support of that contention, and it was said to be followed by *Cleckheaton Local Board v. Burnup*. I always thought that decision of *Maude v. Baildon Local Board* was wrong . . . and it now appears that it lately has been decided in the Court of Appeal in the case of *Jowett v. Idle Local Board* that the definition of the word "street" given in the fourth section must be construed along with the 150th section. And finally *Jowett v. Idle Local Board* was followed in *Fenwick v. Croydon Rural Sanitary Authority* [1891], 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. (N.S.) 645; 40 W. R. 124; 55 J. P. 470; 7 T. L. R. 594. There the appellant was summoned under this section for non-payment of expenses incurred by the rural authority in sewerage, paving, &c., a road on which his premises abutted. An order of the Local Government Board under section 276 had declared this section to be in force as to the road in question, which the order also declared to be a street. The road ran from a turnpike road to a bridge, where it passed into another parish, and was from that point repaired by the local board of that parish as a highway. It was about 900 feet long. It had on the south side several houses, including the appellant's house, abutting on it; on the north side there were none for 785 feet from the turnpike road. For the rest of its course it was bounded on that side by a sewage farm belonging to the rural authority, on which were two buildings. It was a public highway. There was no

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evidence of formal dedication of the road, but there was evidence of its use as a public highway since 1835, and some evidence before 1835, but none inconsistent with its having been then an occupation road or footpath. The justices held the order of the Local Government Board conclusive, that the road was a street, and further held that, although, in their opinion, it was not a street in the popular acceptance of the word, it was a street within section 4. On a case stated it was held that the justices were wrong in holding that the order of the Local Government Board was conclusive that the road was a street, but that by the definition in section 4 it was a street within the meaning of this section, and the appellant was liable.

The word "street," as here used, includes streets "which are in all respects private, and over which the public have no right." Per JESSEL, M.R., in *Taylor v. Corporation of Oldham*, 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 303.

In *Eccles v. Wirral Sanitary Authority*, ante, p. 14, it was stated by MATHEW, J., that in the *Midland Railway Company v. Watton*, supra, CAVE, J., had decided that it was the duty of the magistrate to state a case setting out the facts on which he had come to the conclusion that a certain road was a street within this section.

The power given by this section only attaches where the particular street requires to be levelled, &c., looking at it as an isolated street. Where, therefore, the local board have required the owner of a house to level the part of a street upon which his house fronted, so as to make it on a level with other streets, it was held that they could not recover from him the expenses incurred by them in doing the work. *Carey or Caley v. Kingston-upon-Hull Local Board*, 34 L. J. M. C. 7; 5 B. & S. 815; 11 Jur. (N.S.) 171; 13 W. R. 143; 11 L. T. (N.S.) 339; 29 J. P. 116. See, however, 55 & 56 Vict. c. 57, s. 9, in districts where that Act is in force.

Where an owner had, with the sanction of the Metropolitan Board of Works, under 25 & 26 Vict. c. 102, s. 44, laid down a sewer in a new street, and the district board afterwards took up this sewer and laid down another for the drainage of the neighbourhood, it was held that the owner could not be charged with any portion of the expenses of the second sewer. *Fulham District Board of Works v. Godwin*, 1 Ex. D. 400; 35 L. T. (N.S.) 907; 41 J. P. 134. Where a sewer had been laid in a street by private persons, and had vested in the urban authority under section 13, ante, p. 32, it was held that the urban authority could not require the owners to lay a new sewer when a new system of drainage had to be adopted. *Bonella v. Twickenham Local Board*, 18 Q. B. D. 577; 56 L. T. (N.S.) 486; 35 W. R. 578, affirmed in Court of Appeal; 20 Q. B. D. 63; 57 L. J. M. C. 1; 58 L. T. (N.S.) 299; 36 W. R. 50; 52 J. P. 356. But it does not follow that because there is in a street a sewer which has become vested in the urban authority, that it is sewered to their satisfaction so as to prevent their requiring it to be sewered under this section. In *Barrow-in-Furness (Mayor, &c., of) v. Dawson*, decided on 4th December, 1890, post, p. 190, SMITH, J., held that was a question of fact to be decided on the evidence whether an urban authority had expressed satisfaction with, or were in fact satisfied with, the sewer as originally constructed; but he accepted the proposition laid down in the *Twickenham* case, that "if after the lapse of a reasonable time after the vesting of sewers in a corporation they had done nothing and expressed no view on the subject, it must be taken to be conclusive as a matter of fact that at the time the sewer was originally constructed they were satisfied with it for the purpose for which it was then used." And see *Walthamstow Local Board v. Staines* [1891], 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430; 7 T. L. R. 446.

A railway company built a bridge over their railway in the metropolis, with additions, on which their station was erected, and they lighted the bridge with street lamps, and allowed the public for eighteen months to use the bridge as a highway. They had made an agreement with a water company to allow water pipes to be carried over the bridge; and they now sought to close the passage to the public, so as to prevent the bridge being dealt with as a street. It was held that the bridge had become by dedication a street, and that the railway company as owners were liable to pay paving expenses. *North London Railway Company v. St. Mary, Islington (Vestry of)*, 27 L. T. (N.S.) 672; 21 W. R. 226; 37 J. P. 341.

In the metropolis, when a new street is paved at the expense of the owners, the vestry or district board is bound afterwards to keep it in repair, whether it has become a highway or not. *Reg. v. Hockney District Board of Works*, L. R. 8 Q. B. 528; 42 L. J. M. C. 151; *St. Giles, Camberwell (Vestry of) v. Hunt*, 56 L. J. M. C. 65. But see *Bonella v. Twickenham Local Board*, supra, where SMITH, J., held that this section could only be put in force once to compel owners to provide a sewer; and in

Hornsey Local Board v. Davis [1893], 1 Q. B. 756 ; 68 L. T. (N.S.) 503 ; 62 L. J. Q. B. 427 ; 57 J. P. 612 ; 4 R. 322, the Court of Appeal took the same view. There, the owners of a building estate, who were predecessors in title of the defendant, deposited plans which were approved by the local authority, showing a road to be drained by an intended sewer crossing the New River ; and an agreement was made by the New River Company with the owners to divert the New River for the purpose of laying the sewer according to the plans. The sewer was laid as far as the New River, where it stopped, and the New River never was diverted according to the agreement, so that the sewer was never completed and had no outfall ; but the work done was from time to time inspected during its progress by a servant of the local authority who authorised the covering in of the various sections, and made reports to the local authority, and they never expressed any dissatisfaction. The sewer was never used and in five years became out of repair, whereupon the local authority gave notice to the frontagers to construct a new sewer, and in default themselves constructed it. But it was held that the local authority had had power to accept and did accept the original sewer, although it had no outfall and was incapable of being used as a sewer, and that the road having once been sewered to the satisfaction of the local authority, the expenses of constructing the new sewer were not chargeable on the frontagers. See further as to the approval of a sewer, *Handsworth Local Board v. Taylor*, 69 L. T. (N.S.) 798 ; 58 J. P. 9, where it was held by ROMER, J., that mere approval of the plans is not equivalent to approval of the sewer.

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In *Walthamstow Local Board v. Staines*, *supra*, CHITTY, J., appears to have held generally that the powers conferred by this section are exercisable once only. See, also, per CHARLES, J., in *Derby (Mayor, &c., of) v. Grudgings* [1894], 2 Q. B., at p. 503. But in *Barry and Cadoston Local Board v. Parry*, Q. B. D., 16th May, 1895, it was held by Lord RUSSELL, C.J., and CHARLES, J., that the urban authority may call upon the frontagers to do any of the works (except sewerage) mentioned in this section from time to time as occasion may require unless and until the street has been declared to be a highway repairable by the inhabitants at large, notwithstanding that such work may have been previously done at the expense of the frontagers to the satisfaction of the urban authority. W. N. [1895], 92 ; 30 L. J. Notes, 339 ; 39 Sol. Journ. 507 ; 59 J. P. 325 n.

A street may be a highway by dedication to and adoption by the public. In *Thomas v. Williams*, 24 J. P. 821, the facts were as follows :—A street belonging to B. was laid out for buildings, and a street formed in 1836, which had ever since been used as a public thoroughfare. B. had never formally dedicated it to the public, and, in 1848, he granted a license to W. to lay down gas pipes, for which, and for preventing others from interfering, B. had received from W. a small annual rent. Since 1853 the local board had repaired the street, and in 1858 they put up notices under 11 & 12 Vict. c. 63, s. 70 (corresponding to section 152, *post*), to make it a highway. W. having been summoned for wilfully injuring the street, being a highway, it was held that there was ample evidence from which the justices might infer that the street had been dedicated to the public by B., and was now a highway.

A new street in the town of Bradford had been repaired by the owners in 1828, and the public had ever since been allowed freely to pass through it, and great numbers had used it. There had been no express dedication or certificate of justices rendering the township liable to repair, and it had never in fact been repaired by any one since the above date, and it did not need repair. The local board having called upon the adjacent owners to pave, sewer, and level it, and on their refusal having done so themselves and obtained an order of the justices on the owner to pay the expenses, it was held that there was ample evidence that this was a highway dedicated to and adopted by the public, and the order was accordingly quashed. *Illingworth v. Montgomery*, 24 J. P. 101.

In 1825, by a local Act improving the town of L., commissioners were appointed who were authorised to repair all streets and highways in the town ; and it was enacted that when any new streets should be laid out and put in good order to the satisfaction of the commissioners, then on the application of the owners of the soil the commissioners might declare such streets to be public highways, and were thereafter to repair such streets like the other streets in the town. In 1830 a new street was laid out and dedicated to the public, who thereafter used it as a public highway, but it was never declared to be such by the commissioners. In 1852, 11 & 12 Vict. c. 63, was applied to the town, and the owners of land adjacent to the new street were required to pave it under section 69 (corresponding to section 150 of this Act). It was held that this was lawful, inasmuch as the street was not a highway repairable

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by the inhabitants at large, the local Act having prevented its becoming a highway unless so declared by the commissioners, for the liability of the inhabitants was taken away by a provision contained in the Act giving power to the commissioners to make rates, and exonerating every person assessed from the performance of statute duty for the repair of the public highways within the town. (It might have been otherwise had the liability of the inhabitants remained as in *Reg. v. St. George, Hanover Square*, 3 Camp. 222.) *Wallington v. White*, 30 L. J. M. C. 209; 10 C. B. (N.S.) 128; 25 J. P. 358. This decision was affirmed by the Exchequer Chamber, *sub. nom. Willes v. Wallington*, 32 L. J. C. P. 86; 13 C. B. (N.S.) 865; 27 J. P. 295. This case was afterwards cited and distinguished in *Hirst v. Halifax Local Board*, L. R. 6 Q. B. 181; 40 L. J. M. C. 43; 25 L. T. (N.S.) 28; 19 W. R. 279; 35 J. P. 261. In that case, by a local Act of 1798, trustees were authorised to pave streets in the township of H. and levy rates on the inhabitants, and all who paid these rates were to be exempt from all other charges for paving. In 1816 A. laid out a street, which he dedicated to the public, and in 1819 it had been used by the public. In 1823 another local Act was passed which repealed that of 1798. It appointed trustees, who were to have all the rights, duties, and obligations of highway surveyors, and exonerated the inhabitants from liability to repair the highways. In 1851 the Public Health Act was applied to the township of H., and on paving the street the board charged the expenses on the adjoining owners. It was held that the street was a highway repairable by the inhabitants at large, for there was nothing in the first local Act which prevented the highway becoming a street by dedication and user, and that the second local Act applied only to streets then in progress or afterwards laid out, and had no effect on streets already public. "Had the second Act been passed before the street became a highway the case would have been exactly analogous to *Wallington v. White*, *supra*." Per LUSH, J.

An owner of land in a suburb of a town who allows the public to pass over his land, but who does not make a road at his own expense, nor propose to dedicate a highway to the public by notice under 5 & 6 Will. 4, c. 50, s. 23, nor undertake to keep the road in repair for twelve months with the view of throwing the future care and expense of the highway on the surveyor and the general rate under the same Act, is not liable to be compelled to pave and sewer the road under the provisions contained in the text. *Healey v. Batley (Corporation of)*, L. R. 19 Eq. 375; 44 L. J. Ch. 642; 39 J. P. 423. In that case the owner of land near a town had in January, 1850, demised the coals under it for six years to K., the owner of the adjoining land. In the lease was an agreement that a street, to be called *Union Street*, should within five years be made across the land under which the coal lay and K.'s land; that a sewer should be made under such road; that the lessor and lessee should, at their own cost, construct and repair so much of the said road and sewer as should extend along their respective lands; and that the road should be used as a public road for all purposes for ever thereafter, and should be maintained by each of the parties so far as the same should extend over his land until the same should be adopted by the surveyor of highways. The road and sewer were never made, and there was no dedication of a highway to the public by notice under the Highway Act. A brickfield and afterwards a colliery were opened on K.'s land, and gaps were opened through which access was obtained to the premises for carts and foot passengers. In 1869 posts and chains were placed across one of the openings, but after a few months the chains were removed. In 1870 K.'s land was sold, and in 1871 conveyed to the plaintiff in fee, and in 1872 the local board called upon him to pave and sewer the alleged street. It was held that the agreement in the expired lease had been abandoned, and could not be enforced, and that it did not amount to a dedication of a right of way to the public. In this case it will be seen that there never was anything which could be called a street. In another case H., who was lessee of land under a lease dated 1855, in 1865 laid out a proposed road across part of his land, and built six houses on one side of the road. In 1870 she abandoned her intention of making the road, and in 1874 she demised the remainder of the land, including the site of the abandoned road. In 1880 the urban authority called upon the representatives of H. to pave the road, and on their neglecting to do so entered on the land and began the work. It was held that the laying out of the proposed road was no dedication of a public right of way, and that an injunction must go against the urban authority. *Hall v. Bootle (Corporation of)*, 29 W. R. 862; 44 L. T. (N.S.) 873. And see *Rolls v. St. Mary, Newington (Vestry of)*, W. N. (1873), p. 168.

S. and other owners of land laid out plots for building, with roads, and engaged a contractor to make the roads to the satisfaction of the local board of C. The surveyor of the local board did in fact approve of the roads, but did not report the matter to

the board, and no formal approval by the board was ever given, but the board having a burial ground situated near, did in fact keep part of the roads for some time in repair, including the part adjacent to S.'s frontage. Afterwards the board called on S. and other owners to sewer the road, and on S. failing to do so, did the work, and sought to recover the expenses. It was held that as the board had never indicated their satisfaction with the paving, &c., the board was not estopped from recovering the expenses. *Smith v. Croydon Local Board*, 32 J. P. 709.

By a local improvement Act of 1838 all streets, ways, and places fully built upon, not being highways, were to be paved, and all such streets, ways, or places as were then making, and might be thereafter made, though not fully built upon, were to be paved, and the expenses to be paid by the frontagers. S. occupied a house in a street formed about 1853, and since used by the public. It was held that he was liable to pay the expenses of paving. *Birkenhead Improvement Commissioners v. Sansom*, 40 J. P. 406.

D. was the owner of a house, the back premises of which had a door leading into an alley or lane which had been used for about fifty years in common by the tenants of nine houses as an access, but there was no thoroughfare through it. It was held that there was evidence justifying the magistrate in finding that this was a new street within the meaning of the Metropolis Management Acts (18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77), so as to make the owners of the houses abutting on it liable for the expenses of paving it. *Dodd v. St. Pancras (Vestry of)*, 34 J. P. 517.

(b) REPAIRABLE BY THE INHABITANTS AT LARGE.—The words "repairable by the inhabitants at large" were not in the corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 69), but were added by 15 & 16 Vict. c. 42, s. 13. The difficulty which arose in *Sunderland v. Herring*, 17 J. P. 741, is thus obviated. See also *Stockport (Mayor of) v. Cheetham*, 24 J. P. 196, where the word street in a local Act was held to extend only to highways repairable by the public.

The words "repairable by the inhabitants at large" are used in contradistinction to "repairable by individuals *ratione tenuræ*." On demurrer to a declaration alleging that it was the duty of a local board to repair a public footpath, it must be taken that such footpath was a highway repairable by the inhabitants at large. *Gibson v. Preston (Mayor, &c., of)*, ante, p. 158. This section applies to all present and future streets, except when they are repairable by the inhabitants at large, and whether they have been dedicated to the public or not. Per QUAIN, J., in *St. Mary, Islington (Vestry of) v. Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85; 30 L. T. (N.S.) 11; 22 W. R. 402; 38 J. P. 198, following *Kingston-upon-Hull v. Jones*, 1 H. & N. 489; 26 L. J. Ex. 33; 21 J. P. 37. In a later case, JESSEL, M.R., said that the word streets as here used "clearly extends to places which are in all respects private, and over which the public have no right." And he added, "What is the Act for? It is a Public Health Act. The owners of these private courts and alleys are, of all the people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the legislature intended to except such places from the operation of the Act? I should say, if the Act were passed for anybody, it must have been to include those owners who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys over which the public have no street rights whatever, but which are intended to be used for the dwellings of the poor and are unprovided with what, according to modern science, is known to be absolutely necessary for their well being." *Taylor v. Oldham (Corporation of)*, 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 178.

An application to justices by a local board for the recovery of expenses from an owner was dismissed on the ground that the street was a highway repairable by the inhabitants at large. The local board some years afterwards made an application against the same person for the recovery of a proportion of paving expenses subsequently incurred in respect of the same street, and a stipendiary magistrate made an order for payment. It was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the adjudication of the justices that the street was a highway repairable by the inhabitants at large on the first application was beyond the jurisdiction of such justices, who had only power to make or refuse an order for

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the payment of the expenses claimed, and that, therefore, such adjudication did not estop the local board from claiming the expenses they claimed on the second application, and consequently that the magistrate might make the order which he made for their payment. *Reg. v. Hutchins*, 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. (N.S.) 364; 29 W. R. 724; 45 J. P. 504.

In *Austerberry v. Oldham (Mayor, &c., of)*, 29 Ch. D. 750; 53 L. T. (N.S.) 543; 33 W. R. 807; 49 J. P. 532, A., by deed, conveyed for value to trustees in fee a piece of land as part of the site of a road intended to be made and maintained by the trustees under the provisions of a contemporaneous trust deed (being a deed of settlement for the benefit of a joint stock company established to raise the necessary capital for making the road), and in the conveyance the trustees covenanted with A., his heirs and assigns, that they, the trustees, their heirs and assigns, would make the road and at all times keep it in repair, and allow the use of it by the public subject to tolls. The piece of land so conveyed was bounded on both sides by other lands belonging to A. The trustees duly made the road which afforded the necessary access to A.'s adjoining lands. A. afterwards sold his adjoining lands to the plaintiff, and the trustees sold the road to the defendants, both parties taking with notice of the covenant to repair. It was held by the Court of Appeal that the plaintiff could not enforce the covenant against the defendants. The promoters of the intended road by deed declared that the road should not only be enjoyed by them for their individual purposes, but "should be open to the use of the public at large for all manner of purposes in all respects as a common turnpike road," but subject to the payment of tolls by the persons using it. It was held that the road was not a highway repairable by the inhabitants at large within the meaning of this section. The court intimated an opinion that an individual cannot, without legislative authority, dedicate a road to the public if he reserves the right to charge tolls for the user; and that the mere fact that a number of persons form themselves into a company for making and maintaining a road, and erect gates and bars and charge tolls, does not make the road a turnpike road in the sense of a turnpike road made such by Act of Parliament, and so dedicated to the public. In the *Midland Railway Company v. Watton*, 17 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405, the owners of a road put up bars upon it, and took tolls from the public for the passages of vehicles, horses, and cattle. It was held to be a street not repairable by the inhabitants at large. A substituted road provided by a railway company under 8 & 9 Vict. c. 20, s. 56, is not within this section. *Friern Barnet Local Board v. Great Northern Railway Company*, 57 J. P. 53.

(c) PART OF SUCH STREET.—It was held with reference to the Metropolis Management Acts (18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77), that although the district board might have resolved that part only of a road should be repaired, yet as they had resolved that the whole should be repaired, there could be only one apportionment on all the owners along the entire road. Therefore, when the surveyor had divided the road into four sections, and apportioned the cost of repairing each section amongst the owners of property in each section respectively, it was held that such apportionments were bad, and could not be enforced. *Whitchurch v. Fulham Board of Works*, L. R. 1 Q. B. 233; 12 Jur. (N.S.) 353; 35 L. J. M. C. 145; 14 W. R. 277; 13 L. T. (N.S.) 631; 30 J. P. 229.

The owners of a field, adjoining a highway repairable by the inhabitants at large, used it for building land, and threw open to the highway a strip of land in front of the houses erected on it. It was held that the houses with the strip of land in front of them formed a street within the meaning of the section, which the urban sanitary authority within whose district it was situate could compel the frontagers to pave, channel, and kerb, to their satisfaction. *Richards v. Kessick*, 57 L. J. M. C. 48; 59 L. T. (N.S.) 318; 52 J. P. 756.

(d) LIGHTED.—This requisition as to lighting is new. See in section 161, *post*, the provisions as to lighting streets.

(e) TO THE SATISFACTION OF THE URBAN AUTHORITY.—See as to this *Bonella v. Twickenham Local Board*, *Barrow-in-Furness (Mayor, &c., of) v. Dawson*, *Walthamstow Local Board v. Staines*, *Handsworth Local Board v. Taylor*, *Hornsey Local Board v. Davis*, *Derby (Mayor, &c., of) v. Grudgings*, cited in note (a), *ante*, pp. 178, 179.

(f) NOTICE TO PAVE, ETC.—Note that the notice may be given to the owner or occupier, but that the owners only are responsible for the expenses if recovered summarily. Unless notice has been given to the owner or occupier to do the work, the

expenses cannot be recovered from the former. *Jarrow Local Board v. Kennedy*, L. R. 6 Q. B. 128; 19 W. R. 275; 35 J. P. 248.

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In another case the plaintiffs incurred expenses in paving a street without having served on the defendants, who were frontagers, a notice under this section. The plaintiffs claimed in an action a declaration that the expenses were a charge on the premises. See section 257, *post*. It was proved that B., a predecessor in title of the defendants, had taken from the plaintiffs a receipt for payment of an instalment of the expenses. It was held that the plaintiffs were not entitled, inasmuch as the service of the notice was a condition precedent to liability on the part of the defendants in respect of the expenses, and the payment by B. could not operate as a waiver of the omission to give the notice. *Farnworth Local Board v. Compton*, 34 W. R. 334. And see *Bacup (Corporation of) v. Smith*, *ante*, p. 11.

In January, 1883, a local board passed a resolution for the paving and sewerage of a certain street, and on the 11th May, 1883, notice was served on P. and Co., requiring them to pave, sewer, &c. P. and Co., had been owners of land abutting on the street, but by a conveyance of 27th April, 1883, had conveyed their estate to the respondent; the local board, however, had no notice of his conveyance. In an action by the local board to recover the paving expenses from the respondent, it was held that P. and Co., were not at the time of the service of the notice either owners or occupiers of the premises, and that as the proper steps prescribed by this section had not been taken, the respondent was not liable. *Wallsend Local Board v. Murphy*, 61 L. T. (N.S.) 777; 6 T. L. R. 29.

See the definition of owner in section 4, *ante*, p. 6. As to authentication and service of the notice, see sections 266, 267, *post*.

The service of the notice on a person who is *de facto* in receipt of the rent, is a service on the owner sufficient to satisfy the requirements of this section. *Peek v. Waterloo and Seaforth Local Board*, 33 L. J. M. C. 11; 9 Jur. (N.S.) 1344; 2 H. & C. 709; 12 W. R. 252; 9 L. T. (N.S.) 338; 27 J. P. 807; and see *St. Helen's (Mayor of) v. Kirkham*, *ante*, p. 11, where an agent for the collection of rents was held to be an owner within the meaning of this section, and other cases there cited. Section 267, *post*, which contains provisions as to service of notices, was intended to provide in aid of those who have to serve notices, and was not meant to prevent a notice, otherwise perfectly good, from being good. Therefore, it was held that service at the owner's place of business, by delivering and reading it to his clerk, was a good service. *Mason v. Bibby*, 33 L. J. M. C. 105; 2 H. & C. 881; 10 Jur. (N.S.) 519; 12 W. R. 382; 9 L. T. (N.S.) 692; 28 J. P. 121.

As some difficulty had occurred in framing the notice under 11 & 12 Vict. c. 63 s. 69, so as to be effectual (see *Parkinson v. Mayor of Blackburn*, 33 L. T. (O.S.) 119; 28 L. J. M. C. 7; *Bayley v. Wilkinson*, 33 L. J. M. C. 161; 16 C. B. (N.S.) 161; 12 W. R. 797; 10 L. T. (N.S.) 543), 24 & 25 Vict. c. 61, s. 17, enacted that the form of notice in Schedule A. to that Act annexed or to the like effect might be used. The form of notice under this Act will be found in Schedule IV., Form G., *post*, although no reference is made to it in the text. Where a local board added to the form words to the effect that if the owner did not do the work they would do it, and declare the expenses to be private improvement expenses, it was held by STEPHEN, J., that the notice was bad, not being an absolute notice to do the work as the section requires. *Gould v. Bacup Local Board*, *post*, p. 196.

In *Acton Local Board v. Lewsey*, 11 App. Cas. 93; 55 L. J. Q. B. 404; 54 L. T. (N.S.) 657; 34 W. R. 745; 50 J. P. 708, Lord BRAMWELL said: "Upon the point which occurred to me, that the board had no right to order the way in which the work should be done, I still have sufficient doubt to recommend local boards, when they do give orders that work shall be done, not to prescribe the mode in which it shall be done, but to content themselves with saying, that if done in a particular way, it will be satisfactory to them."

A notice which is *ultra vires* as to part, but good as to the residue, can be enforced in respect of that which is valid. Thus a notice to flag a street fronting premises, referring to a place which included a garden not dedicated to the public, was held to be valid so far as it applied to the street, and enforceable accordingly. *Hall v. Potter*, 39 L. J. M. C. 1; 21 L. T. (N.S.) 454; 34 J. P. 515.

Notice was given to the appellant and five others requiring them to sewer, pave, &c., the parts of the street in front of their premises within a specified time. Five of the owners executed the works, but the appellant made default. The board thereupon did the work, and the surveyor having made an apportionment gave her notice accordingly. It was held that the respondents were not bound before executing the work to give the appellant a fresh notice specifying the particular works remaining

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to be done by her. *Simcox v. Handsworth Local Board*, 8 Q. B. D. 39 : 51 L. J. Q. B. 168 ; 30 W. R. 723 ; 46 J. P. 260. In this case it was argued that the notice was not a separate notice to each owner to do the work opposite his own premises, but was a notice to all the owners in respect of the entire work. But GROVE, J., in delivering the judgment of the court, said it was not meant that each owner may be called upon to execute the whole. And see *Wakefield Sanitary Authority v. Mander*, 5 C. P. D. 248 ; 28 W. R. 922 ; 44 J. P. 522, the facts of which are stated in note (n) *post*. It is submitted on the authority of these cases that, notwithstanding the ambiguity of the text, and of the form of notice in the schedule to the Act, the notice only requires the owner to whom it is addressed to do such part of the work as is required to be done in that part of the street upon which his premises abut, and that his liability must be determined accordingly. If he can and does execute the necessary work upon that portion of the street he cannot be made liable in respect of the remainder.

No provision is made in the Act for the owners to object to the notice, such as that in 26 & 27 Vict. c. 70, s. 10. As to the effect of default in making objection under that section, see *Reg. v. Livesey*, 22 L. T. (N.S.) 470 ; 34 J. P. 645. In a case where a local board had duly proceeded under the Act, and had sewered, &c., a new street, and no notice had been given by an owner that he disputed the apportionment, it was held that it was still open to the owner to dispute his liability, and to show that the street was a highway repairable by the inhabitants at large. *Hesketh v. Atherton Local Board*, L. R. 9 Q. B. 4 ; 43 L. J. M. C. 37 ; 29 L. T. (N.S.) 530 ; 38 J. P. 149 ; and see *Ex parte Wake, Reg. v. Recorder of Sheffield*, 11 Q. B. D. 291 ; 53 L. J. M. C. 1 ; 32 W. R. 82 ; 47 J. P. 504, affirmed in C. A. 12 Q. B. D. 142 ; 53 L. J. M. C. 1 ; 50 L. T. (N.S.) 76 ; 32 W. R. 82 ; 48 J. P. 197. And see note (l) *post*.

(g) PREMISES FRONTING, ADJOINING, OR ABUTTING.—See the definition of *premises* in section 4, *ante*, p. 6. The term includes *land*. A railway in a metropolitan district was carried across a new street by an arch. On one side of the street the railway was carried forward on arches, and on that side was a strip of land, 10 feet wide, left open for the purpose of repairing the arches ; this abutted for 10 feet on the street. On the other side the railway was carried forward on an embankment, and the sloping part of the embankment abutted on the street about 30 feet, and at the foot of the embankment was an open space also about 30 feet wide, also abutting on the street, and left for the purpose of allowing of slips on the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land* abutting on the street. *Higgins v. Harding*, L. R. 8 Q. B. 7 ; 42 L. J. M. C. 31 ; 27 L. T. (N.S.) 483 ; 21 W. R. 191 ; 37 J. P. 677. This case may be usefully compared with *London, Brighton, and South Coast Railway Company v. St. Giles, Camberwell*, 4 Ex. D. 239 ; 48 L. J. M. C. 186 ; 41 L. T. (N.S.) 162. In that case a line of railway was situate in a deep cutting at a place where a road passed over the line. The road was carried over on a bridge from one boundary of the line to the other, but supported on stone piers erected on the slope of the cutting. It was held that neither the railway under the bridge nor the sloping sides of the cutting could be said to abut on the road. Where a railway ran in a cutting and adjoined a new street which the vestry were about to pave, and was separated from it by a wall, through which there was no communication between the street and the railway, it was held that the railway *bounded* or *abutted* upon the street within the meaning of 25 & 26 Vict. c. 122, s. 77. *London and North Western Railway Company v. St. Pancras (Vestry of)*, 17 L. T. (N.S.) 654. All these cases as to railway cuttings were discussed and approved of in a recent case before the House of Lords. There a railway company carried a road over a deep cutting by means of a bridge. The road having been paved by the board of works for the district, and so constituted a new street, the railway company were required to contribute to the cost of paving, &c. It was held that neither the parapets of the bridge nor the adjacent soil in the cutting were lands “bounding or abutting on the new street.” *Great Eastern Railway Company v. Hackney District Board of Works*, 8 App. Cas. 687 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 31 W. R. 769 ; 48 J. P. 52 ; reversing 9 Q. B. D. 412 ; 51 L. J. M. C. 57 ; 46 L. T. (N.S.) 679 ; 30 W. R. 765 ; 46 J. P. 532. But see 55 & 56 Vict. c. 57, s. 22, in districts where that Act has been adopted.

A local Act empowered commissioners to pave streets and to recover the expenses by rates from the occupiers of houses, &c., “situated or being within any of the streets” in the district. It was held that houses and buildings in a yard communicating with a street by a covered gateway, which houses and buildings abutted on houses in the street, were situated *within the street* so as to be liable to the rates. *Baddeley v. Gingell*, 1 Ex. 319 ; 11 J. P. 838. This decision was followed in *School Board for*

London v. St. Mary, Islington (Vestry of), 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. (N.S.) 504; 24 W. R. 137; 40 J. P. 310. In that case the London School Board were assessed in respect of a school-house which did not immediately front the street, but stood back from it some 70 or 80 feet in a large yard, the whole area being about 29,500 square feet. There was a row of eleven small houses with gardens at the back of them between the area and this street; but the only access to the school was by a private passage which ran along one side of the last house and garden into the school yard, with gates opening from the street in question, the width of the passage being 20 feet and the length about 64 feet. It was held that the school-house, though not actually one of the houses forming the street, yet practically formed part of it, so as to render the board liable as owners for the paving expenses. The court held it was the benefit of access to the street which was the foundation of the liability. But an opinion was expressed that this principle would not apply to the case of an old-established court, the access of which was common to the public and open to every one who liked to go in. And it is not necessary, apparently, that there should be actual access, if there is a possibility of access. It is well established that the owner of land adjoining a highway or street has the right of access to it at any point where it adjoins his premises. See *St. Mary, Newington (Vestry of) v. Jacobs*, L. R. 7 Q. B. 47; 41 L. J. M. C. 72; 25 L. T. (N.S.) 800; 20 W. R. 249; 36 J. P. 119; *Marshall v. Ulleswater Company*, L. R. 7 Q. B. at p. 172; 41 L. J. Q. B. 41; 25 L. T. (N.S.) 793; 20 W. R. 144; 36 J. P. 583. And see *Ramuz v. Southend Local Board*, 67 L. T. (N.S.) 169; *Peache v. Wimbledon Local Board*, "Times," 17th July, 1893; 15 M. C. C. 359; "Times," 18th December, 1893; 16 M. C. C. 23; and in C. A., "Times," 24th April, 1895. This principle will explain many of the cases where there was no direct access to the street. Thus, in one case the court held that the expenses must be apportioned among all the owners of premises fronting, adjoining, or abutting on the street in proportion to the frontage, without any reference to direct or consequential benefit, which the Act assumes must be taken as proportioned to the frontage. Therefore, a railway and canal company whose premises lay along one side of a street were held liable to pay their proportion of the expenses, although they had no immediate access to the street. *Reg. v. Newport Local Board*, 32 L. J. M. C. 97; 3 B. & S. 341; 9 Jur. (N.S.) 746; 11 W. R. 263; S. C., *Powell v. Newport Local Board*, 27 J. P. 389. Again, the owner of ground at the end of a street forming a *cul-de-sac* was held liable to pay the expenses of paving, &c., under a local Act, notwithstanding that a wall divided his property from the street, which wall, however, he might at any time have removed wholly or partially so as to obtain access to the street. *Manchester (Mayor, &c., of) v. Chapman*, 18 L. T. (N.S.) 640; 16 W. R. 974; 37 L. J. M. C. 173; 32 J. P. 582; and see *Sheffield v. Fulham District Board of Works*, 1 Ex. D. 295. In another case, premises fronting W. street were divided from D. street by a small stream, but, by two bridges over the stream, were connected with it. By reason of gates all communication with the street could be closed. One of the bridges had been moved and reinstated by the owner of the premises. It was held that the premises fronted, adjoined, or abutted on D. street. *Wakefield Local Board v. Lee*, 1 Ex. D. 336; 35 L. T. (N.S.) 481; 41 J. P. 54.

B. was the owner of a house which had its front and only entrance in F. street, and behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, of which the dead wall at the end of B.'s garden was part of the line of street. It was held that B.'s land abutted on this new street. *Paddington (Vestry of) v. Bramwell*, 44 J. P. 815.

A. was the owner of three houses fronting a street called York Place, and adjoining or abutting at the rear upon a footpath at the end of a street called St. Julian Street, which formed a *cul-de-sac*. The ground at the back of these houses was five feet above the level of St. Julian Street, and the wall, which was the property of A., was about twelve feet high on the outside. There was no access from A.'s premises to St. Julian Street. It was held that his premises adjoined or abutted on St. Julian Street within this section. *Newport Sanitary Authority v. Graham*, 9 Q. B. D. 183; 47 L. T. (N.S.) 98; 31 W. R. 121; 47 J. P. 133.

In a Scotch case under a similar Act it was held that the upper flat of a tenement held with a plot of garden fronting A. street on the west, and bounded by B. street on the north, were premises abutting on B. street, although the only entrance was from A. street. *Campbell v. Magistrates of Edinburgh*, 19 Ct. Sess. Cas., 4th ser., 159; 29 Scottish Law Reporter 146.

The appellant, having a strip of land about four inches wide and 265 feet long abutting on the north side of a street, had erected a boundary fence upon the land along its whole extent, under a covenant to erect, and for ever after maintain, a fence

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thereon made with his vendor, who was owner of the land adjoining the strip on the north side. It was held that the appellant was the owner of the strip of land, and, as such, liable for paving expenses. *Williams v. Wandsworth Board of Works*, 13 Q. B. D. 211; 53 L. J. M. C. 187; 32 W. R. 908; 48 J. P. 439. The court pointed out in this case that, in the event of the owner of the adjoining property desiring to have access to the street, the strip would command a considerable rent. It was therefore capable of being let at a rack rent.

A. B. owned plots of land, with cottages thereon, separated from a street by a wall five feet high, which belonged, with the land on which it stood, to another person. There was a public footway which went between the plots of land and through an opening in the wall into the middle of the street. The backs only of the cottages fronted the street, and the only way for vehicles from the cottages to the street was by a small roadway, which, without touching that part of the street which had been paved, came into a highway which joined one end of such street. With the exception of the public footway, this roadway was the only access from the cottages to the street. It was held by the Court of Appeal, affirming the judgment of the Queen's Bench Division, that A. B. was not the owner of premises "fronting, adjoining, or abutting" on the street within the meaning of this section. *Lightbound v. Higher Bebington Local Board*, 16 Q. B. D. 577; 55 L. J. M. C. 94; 53 L. T. (N.S.) 812; 34 W. R. 219; 50 J. P. 500. With reference to the meaning of the word "adjoining," BOWEN, L.J., said: You cannot define 'adjoin' as meaning benefit of access, or *vice versa*, but in considering whether houses adjoin which are placed in close proximity to the part of the street which is to be paved, it is a most important fact, and, in many cases, a dominant fact, to see whether there is a substantial access and advantage which the houses enjoy from that portion of the street which is to be paved, and a substantial access and advantage of that kind, coupled with close proximity, may bring the case within the word 'adjoin' though there is no actual touch."

The case of *Williams v. Wandsworth District Board of Works*, *supra*, may be compared with a Scotch case, *Magistrates of Leith v. Gibb*, 9 Ct. of Sess. Cas. (4th series) 627. There the owner of property, which was separated from a street by a wall which belonged to someone else, was held not to be liable as the owner of property "fronting or abutting" on such street. The Lord President said there must be access, or an undoubted right of access, from the property sought to be charged to the street. But see *Campbell v. Magistrates of Edinburgh*, *supra*.

The soil of private roads leading out of a new street was held to be "land bounding or abutting on such street" in *Lord Northbrook v. Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461; 20 W. R. 177; 36 J. P. 468. But in this case Lord Northbrook had determinately reserved the property in the private roads to himself. He had not dedicated them to the public, and nothing that he had done was past recall. Therefore, in a subsequent case, this decision was distinguished. There the defendants, a land company, being owners of certain lands in 1863, laid them out for building purposes and made roads and ways across them, and nearly the whole of the estate was sold in lots to different purchasers. Each lot had a frontage upon one of the roads. The roads had been dedicated to the public, as far as any act of the defendants could do so, but no proceedings were taken to make them repairable by the parish. The plaintiffs, the board of works for the district, from time to time paved the new streets formed by the houses on the estate, and apportioned the cost among the owners of houses forming the streets and the owners of land bounding and abutting on the street. In so doing they assessed the defendants in respect of the new streets or roads when these bounded or abutted on the sides or ends of the streets paved, as being lands abutting on those streets within 25 & 26 Vict. c. 102, s. 77. It was held by the Exchequer Chamber that, assuming the property in the soil of the roads to be in the defendants, they were improperly charged, for that they were not in respect of roads which had been irrevocably dedicated to the public, the owners of land within the meaning of the section. *Plumstead Board of Works v. British Land Company*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; 32 L. T. (N.S.) 94; 23 W. R. 634; 39 J. P. 376; reversing L. R. 10 Q. B. 16; 31 L. T. (N.S.) 752; 23 W. R. 133; 39 J. P. 133. The premises in respect of which expenses can be recovered under this section must then, as it appears, be such as are capable of being let at a rack rent. See *Angell v. Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 9 B. & S. 496; 32 J. P. 742, and per Lord ESHER, M.R., in *Wright v. Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 54 L. T. (N.S.) 511; 34 W. R. 221; 50 J. P. 436. In the *Great Eastern Railway Company v. Hackney District Board of Works*, the facts of which have been stated, *ante*, p. 184, Lord FITZGERALD said: "The bridge is, by the statute, dedicated to public use, and its fence

walls are for public protection; and if the ownership and control of the walls is in the company, it is so for public purposes and subject to the obligation of perpetual maintenance, unless and until some other good and sufficient fences shall be provided by the company in their stead for public protection. The company could not let the walls at a rack rent, and if they might use them for any purposes, it must be a use subordinate to the public purposes to which the bridge as a structure is in its whole devoted." It must be observed, however, that 25 & 26 Vict. c. 102, s. 77, makes the owners of houses and land in the street liable not only for the work done to the street proper, but for the paving, &c., of the inter-sections of the streets. This provision is not contained in the text, and it remains to be decided whether in an urban district the owners of the soil of a public street abutting on a street within this section can be charged with a proportion of the expenses of paving, &c., the latter. See also *Meyrick v. Attorney-General, St. Giles, Camberwell (Vestry of) v. London Cemetery Company, ante*, p. 10.

(h) MEANS OF LIGHTING.—What are means of lighting? Apparently, the phrase means structural works only, such as pipes, lamps, &c., and does not include a supply of gas, &c.

(i) DEPOSIT OF PLANS.—The deposit of these plans is not a condition precedent to the recovery of the expenses from the owners. *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. (N.S.) 579; 19 W. R. 1079; 35 J. P. 565. In *Shanklin Local Board v. Millar*, 5 C. P. D. 272; 49 L. J. C. P. 512; 42 L. T. (N.S.) 788; 29 W. R. 63; 44 J. P. 635, the county court judge held that payment under this section could not be enforced, on the ground that the opportunities afforded to the defendant of inspecting the documents deposited were not reasonable, the bye-laws of the local board having provided that the office of the board should be open only on Mondays and Thursdays from 10 till 3. The High Court reversed this decision on the ground that the provision as to deposit of plans was directory only and was not a condition precedent to the recovery of the expenses. It has also been held that the omission to follow the plans in every respect does not affect the right to recover the expenses. See *Acton Local Board v. Lewsey, ante*, p. 183.

(k) EXECUTION OF WORKS BY URBAN AUTHORITY.—Owners having made default, the local board of M. made a contract with W. to do the work for them, the work to be done within four calendar months after the signing of the contract, and the contractor to be paid for the work when the money was collected from the owners of the adjoining property. The local board had unintentionally given bad notices, and were, therefore, unable to collect the money from the owners. W., having done the work contracted for, brought an action against the local board for the amount due to him by the contract. It was held that he was entitled to recover, as an undertaking must be implied on the part of the local board that they were in a position to collect the money from the owners and pay it over to him. *Worthington v. Sudlow*, 31 L. J. Q. B. 131; 2 B. & S. 508; 8 Jur. (N.S.) 668; 10 W. R. 621; 6 L. T. (N.S.) 283; 26 J. P. 453. In another case the plaintiff had in 1858 entered into contracts with a local board for the execution of works under this section, to be paid for out of money to be collected from those on whom the works were chargeable under the Act. The contracts were duly performed by the plaintiff. The notices given by the board turned out to be bad, and many of those who would otherwise have been liable refused to pay the sums assessed upon them. This became known to the plaintiff in 1860, and he then demanded payment. The board were in hopes of being able to collect the money, notwithstanding the invalid notices, and by November, 1860, 800*l.* was collected and paid over to the plaintiff, leaving a balance due of more than 3,000*l.* The plaintiff commenced an action for this sum and obtained judgment, and within six months afterwards he commenced an action claiming a writ of *mandamus* commanding the board to levy the rate to satisfy the judgment. It was held that the delay in commencing the original action was excused and shown not to be undue, and that a peremptory writ might be granted. *Worthington v. Hulton*, L. R. 1 Q. B. 63; 6 B. & S. 943; 12 Jur. (N.S.) 73; 35 L. J. Q. B. 61; 14 W. R. 632; S. C., *Worthington v. Sudlow*, 30 J. P. 22.

Before entering into a contract for the execution of work for the local authority under this section, it is not necessary to obtain an estimate from the surveyor as to future repairs under section 174, sub-section 3, *post*; nor is such report a condition precedent to the right to recover the amounts apportioned on the several owners. *Cunningham v. Wolverhampton Local Board*, 26 L. J. M. C. 33; 7 E. & B. 107; 3 Jur. (N.S.) 385; 21 J. P. 262.

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As to the power of a local authority to agree with one or more owners to execute the works without observing the formalities required by the section, see *Hall v. Batley (Corporation of)*, ante, p. 55. That case was decided with reference to section 23, but the principle laid down in it appears to be equally applicable to this section. In that case LUSH, J., said: "It is not permitted to them (the local authority) arbitrarily to interfere and do the work at the owner's expense without first giving him the opportunity of doing it himself. But if they were to do so he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and surely the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." And section 257, *post*, evidently contemplates that there are works which may be done by agreement with the owner, so as to be recoverable from him and to be a charge on the premises as therein provided. In *Lewis v. Cardiff Urban Sanitary Authority*, 47 L. J. M. C. 101, an owner having received notice to pave, &c., endorsed on the notice an authority to the local board to execute the works, and an undertaking to pay the costs on completion. On default of payment after demand made, the board proceeded to recover the expenses in a summary manner. On a case stated it was held that the owner, having by the submission endorsed on the notice admitted the right of the sanitary authority to issue such notice, he could not require proof before the justices of the fulfilment of the conditions precedent to the existence of such right. It was held, however, that the owner could not by such submission give jurisdiction to the sanitary authority if in fact they had none, but that he did thereby waive the proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to dispute it. It was, therefore, open to him to show that the street was not a highway repairable by the inhabitants at large.

It must be noticed that the urban authority have a discretion as to whether they will execute the works or not.

(l) IN A SUMMARY MANNER.—See section 251, *post*. It is to be observed that where a statute provides a method of recovering such expenses, an action will not lie, the remedy given by the statute being exclusive. *St. Pancras (Vestry of) v. Batterbury*, 26 L. J. C. P. 243; 2 C. B. (N.S.) 477; 3 Jur. (N.S.) 1106; 21 J. P. 424. And see *Lamplugh v. Norton*, 22 Q. B. D. 452, 456; 58 L. J. Q. B. 279; 37 W. R. 422; 53 J. P. 389; 5 T. L. R. 304; *Re Boor, Boor v. Hopkins*, 40 Ch. D. 572, 576; 58 L. J. Ch. 285; 60 L. T. (N.S.) 412; 37 W. R. 349; 53 J. P. 467; *Great Western Railway Company v. Sharman*, 61 L. J. Q. B. 600; 40 W. R. 643. By a special Act incorporating the Railways Clauses Act, 1845, and the Towns Improvement Clauses Act, 1847, it was enacted that certain expenses incurred by the Commissioners in paving streets, &c., might be recovered as damages. An action having been brought to recover expenses so incurred, it was held that such action was not maintainable, for that the proper construction of the several Acts was, that the expenses were to be recovered as damages on a proceeding before justices under section 210 of the Towns Improvement Clauses Act. *Blackburn (Mayor of) v. Parkinson*, 28 L. J. M. C. 7; 1 E. & E. 71; 5 Jur. (N.S.) 572; 22 J. P. 751; 33 L. T. (O.S.) 119. But this Act provides for the recovery of amounts below 50*l.* in the county court (section 261), and makes the amount a charge on the premises (section 257).

This section does not create the relationship of debtor and creditor between an owner and the local authority. The only means of recovering the expenses is that provided by the Act. Therefore, a summons for leave to prove in an administration action for the amount awarded was dismissed by the Court of Appeal in *West v. Downman*, 14 Ch. D. 111; 42 L. T. (N.S.) 340; 29 W. R. 6. And see *Re Boor, Boor v. Hopkins*, *supra*. In *Eccles v. Wirral Sanitary Authority*, 17 Q. B. D. 107; 55 L. J. M. C. 106; 34 W. R. 412; 50 J. P. 596, MATHEW, J., said: "By section 261, jurisdiction is conferred on the county court in cases of this kind, when the amount is below 50*l.*, and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above 50*l.*, an action would lie in the superior court." But this *dictum* was delivered without reference to the cases above cited, and it is submitted that no action lies in the superior court for the recovery of these expenses.

As to the several methods of enforcing payment of these expenses under this Act, see the notes to section 257, *post*, and especially the judgment of BRETT, L.J., in *Tottenham Local Board v. Rowell*, there quoted at length.

Summary proceedings having been taken against an owner for payment of his proportion of the expenses, the justices made an order on him adjudging him in

default of distress to be imprisoned with hard labour. As the justices had no power to order hard labour, the quarter sessions on appeal quashed the order without going into the merits. Afterwards the local authority obtained a new order to pay the same amounts. It was held that the justices had jurisdiction to make the new order, the former having been quashed as null and void. *Lister v. Hebden Local Board*, 42 J. P. 119.

Orders having been obtained by a local board for payment by A., L., and others, of certain paving expenses incurred under this section, an agreement was come to that the order against L. should not be enforced for three months, in order to enable a case to be stated for the opinion of the Court of Queen's Bench on a point of law. An understanding was at the same time come to that the order against A. should abide the decision in L.'s case. L., instead of taking the case to the Queen's Bench, went before the quarter sessions, and the order against him was quashed on a technical ground. See *Lister v. Hebden Local Board*, *supra*. A. was not informed of the course taken by L., and the three months having expired within which she should have appealed, the local board obtained an order against her for payment of the rate. On motion by A. to restrain the board from enforcing the order until she had had an opportunity of stating a case for the opinion of the Court of Queen's Bench, it was held that the court had power to restrain the board from enforcing the order, and on A. undertaking to consent to a case and to pay the money into court, the injunction was granted. *Ashworth v. Hebden Bridge Local Board*, 47 L. J. Ch. 195; 37 L. T. (N.S.) 496.

The court cannot entertain any question as to whether the work was necessary or proper under the circumstances, that being for the local board to decide. *Bayley v. Wilkinson*, 16 C. B. (N.S.) 160; 33 L. J. M. C. 161; 10 L. T. (N.S.) 543; 12 W. R. 797; *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. (N.S.) 579; 19 W. R. 1079; 35 J. P. 565. And see *Chelsea (Vestry of) v. Evans*, 35 J. P. 23. They may, however, enquire into the original liability of the persons charged; for example, they may and ought to decide whether the street is or is not a highway repairable by the inhabitants at large. *Hesketh v. Atherton Local Board*, L. R. 9 Q. B. 4; 43 L. J. M. C. 37; 29 L. T. (N.S.) 530; 38 J. P. 149. And see to the same effect *Midland Railway Company v. Watton*, 17 Q. B. D. 30; 34 W. R. 524; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 50 J. P. 405; *Eccles v. Wirral Union*, 17 Q. B. D. 107; 34 W. R. 412; 50 J. P. 180; *Cleckheaton Local Board v. Burnup*, 50 J. P. 598. An objection that a street is a highway repairable by the inhabitants at large, and an objection that the street has already been paved or sewered to the satisfaction of the urban authority may properly be raised in proceedings to enforce payment of the expenses, for they go to the jurisdiction of the local authority to execute the works at the expense of the frontagers. *Walthamstow Local Board v. Staines* [1891], 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. (N.S.) 430; 7 T. L. R. 446. If, however, there is any ground of liability, and the objection only goes to the extent of that liability and the principle upon which it is to be determined, the justices or other court cannot entertain the objection in proceedings to enforce payment. Thus in *Ex parte Wake, Reg. v. Recorder of Sheffield*, 12 Q. B. D. 142; 53 L. J. M. C. 1; 50 L. T. (N.S.) 76; 32 W. R. 82; 48 J. P. 197, the frontager objected that the plans referred to in the notice showed that part of the work was executed upon land belonging to private owners. But it was held that as part of the work was executed in a street, the magistrate could only make an order for the apportioned sum, and the frontagers only remedy was by appeal to the Local Government Board under section 268. The decision of the local board in determining to do the work, &c., was only erroneous, and not without jurisdiction. This case was followed in *Derby (Mayor, &c., of) v. Grudgings* [1894], 2 Q. B. 496; 63 L. J. M. C. 170; 43 W. R. 74; 58 J. P. 685; 10 T. L. R. 455; 10 R. 565. There the owner of premises fronting on a short street having failed to comply with a notice under this section to sewer, &c., the urban authority did the work themselves, and took proceedings before justices to recover the sum apportioned on him by their surveyor. The owner had given no notice under section 257 disputing the apportionment within the specified time. At the hearing of the complaint it was shown that the carriageway of the street was a highway repairable by the inhabitants at large, but that the footway on which the owner's premises fronted was not. And it was held on the authority of *Wake's case* that the urban authority had jurisdiction to give the notice and make the apportionment in respect of the footway, and that the owner having failed to dispute the apportionment under section 257 it was conclusive against him, and he could not at the hearing before the justices dispute his liability to pay any part of the apportioned sum. In another case the objection taken

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Note to Section 150. before the justices was that part of the work (exceeding 50*l.* in value) had been done by a contractor without a sealed contract, and it was urged that a payment under such a contract was illegal. SMITH, J., pointed out that the objection if valid could not be raised in this way. *Bournemouth Commissioners v. Watts*, 14 Q. B. D. 87; 54 L. J. Q. B. 93; 51 L. T. (N.S.) 823; 33 W. R. 280; 49 J. P. 102. So it is not open to a frontager to say that, while rightly assessed for certain premises, he has also been assessed for others which do not front or adjoin the street. Such an objection is merely to the amount of the apportionment, and should be taken by way of objection to the apportionment under section 257. "It was argued that there was an excess of jurisdiction by the surveyor in respect of part of the sum apportioned. But it seems to me that if he had jurisdiction to make an apportionment against the appellants, which it is admitted he had, then the only possible objection is that he has made such apportionment incorrectly; but that is only an erroneous exercise of jurisdiction, not an excess of jurisdiction. If he had made an apportionment on a person who was not a frontager in respect of any land, there would be an excess of jurisdiction, but that is not the present case." The result of the case appears to be that an objection may be taken before justices that the defendant is not liable to pay anything, on the ground that he is not a frontager, or that the place is not a street, or that the place is a highway; but an objection that the apportionment is for too much, as, for example, that there is no liability as to part, must be taken by way of objection to the apportionment under section 257, or by way of appeal to the Local Government Board under section 268, according to the nature of the objection. See *Eccles v. Wirral Sanitary Authority*, *supra*. "There can be no doubt that an apportionment under section 150 is not conclusive of every defence which can be set up when the frontager is called upon to pay. He may say that the place is not a street, or that he has no premises fronting on the street, or that the place is a highway repairable by the inhabitants at large. He may set up all those defences, and as it seems to me, any other defence which offers an answer to the whole of his legal liability." But where the question is only as to the amount of his liability then the apportionment, if not challenged under section 257, is conclusive. Per CHARLES, J., in *Derby (Mayor, &c., of) v. Grudgings* [1894], 2 Q. B., on p. 504. These cases must be regarded as superseding the judgment of BACON, V.C., in *West v. Downman*, 14 Ch. D. 111; 42 L. T. (N.S.) 340; 29 W. R. 6. In *Walthamstow Local Board v. Staines*, *supra*, the court seemed to think that the only way of raising an objection to the legality of part of the expenses (such as legal expenses, collection, &c.) was by way of appeal to the Local Government Board under section 268. No doubt the question might be so raised. But it is not clear that there is not also a remedy by objecting to the apportionment and raising the point before the arbitrator. See *Sandgate Local Board v. Keene* [1892], 1 Q. B. 831; 61 L. J. Q. B. 775; 66 L. T. (N.S.) 741; 56 J. P. 484.

As to the effect of a decision that a street is a highway repairable by the inhabitants at large, see *Reg. v. Hutchins*, 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. (N.S.) 364; 29 W. R. 724; 45 J. P. 504, the facts of which are set out, *ante*, p. 181, 182.

The justices cannot enquire into the reasonableness of the expenditure or whether it has been incurred in point of fact. Nor is it a good objection before justices that the notices required the street to be paved in a particular way, that the plans differed from the notice, and the work done from both. These are only matters of appeal to the Local Government Board under section 268, *post*. *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. (N.S.) 579; 19 W. R. 1079; 35 J. P. 565. It has been held by the House of Lords that the omission strictly to follow the terms of their own notice does not prevent the local authority from recovering from the owner his proportion of the expenses incurred. *Acton Local Board v. Lewsey*, 11 App. Cas. 93; 55 L. J. Q. B. 404; 54 L. T. (N.S.) 657; 34 W. R. 745; 50 J. P. 708. In that case the notice required the owner to pave part of a street, specifying the materials and mode, and (*inter alia*) requiring him to lay down concrete. The owner having made default, the local authority did his work, but, finding that the concrete would be an unnecessary expense, omitted it.

The S. urban sanitary authority gave notice to K., an owner of land adjoining a new street, to sewer the road, and lay an 18-inch pipe. K. having neglected, the authority, in course of carrying out the work, found a 12-inch pipe sufficient, and used it, and it saved expense to K. on the apportionment. It was held that the magistrate was right in holding that the apportioned expenses of the altered work were recoverable under this section, the alteration being not a material matter nor invalidating the notice. *Kershaw v. Sheffield (Corporation of)*, 51 J. P. 759.

The provisions of 11 & 12 Vict. c. 43, s. 11, which limit the time within which

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proceedings can be taken before justices to a period of six months from the time when the matter of complaint arises, applies to the recovery of these expenses by summary proceedings; but the six months do not begin to run till after the expiration of the three months during which the apportionment may be disputed under section 257, *post*. *Jacomb v. Dodgson*, 32 L. J. M. C. 113; 3 B. & S. 461; 9 Jur. (n.s.) 848; 11 W. R. 308; 7 L. T. (n.s.) 674; 27 J. P. 548. See also, per LUSH, J., in *Wilson v. Bolton (Mayor of)*, L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. (n.s.) 597; 36 J. P. 405, and the judgments in *West v. Downman*, 14 Ch. D. 111; 42 L. T. (n.s.) 340; 29 W. R. 6. When a notice of apportionment was a nullity, and a second and valid notice was afterwards given, it was held that the time did not begin to run until after the second notice. *Sykes v. Huddersfield (Mayor, &c., of)*, 35 J. P. 614.

And the same limitation applies as well to proceedings in the county court under section 261, *post*. Therefore it was held that the amount of the expenses could not be recovered by action in the county court brought more than six months after the expiration of the three months allowed for disputing the apportionment. *Tottenham Local Board v. Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (n.s.) 887; 25 W. R. 135, following *West Ham Local Board v. Maddams*, 1 Ex. D. 516n; 33 L. T. (n.s.) 809; 40 J. P. 470. But it must not be assumed that the time runs from the date of the notice of apportionment, so that at the expiration of nine months from that date the expenses cease to be recoverable summarily or in the county court under section 261. Before any proceedings can be taken to recover the expenses, it is necessary that a demand of payment should be served upon the owner, and the time runs from the date of such demand, and not from that of the notice of apportionment, which is not a sufficient demand. See section 257, *post*; *Greece v. Hunt*, 2 Q. B. D. 389; 46 L. J. Q. B. 202; 36 L. T. (n.s.) 404; 25 W. R. 543; 41 J. P. 356. The court pointed out that this decision was not inconsistent with *Jacomb v. Dodgson*, *supra*, for in that case there had been a demand at the expiration of the three months after the notice of apportionment. It may be reconciled with the other cases cited for the like reason. Consequently, there is no limitation of the time within which proceedings, whether summary or in the county court, must be taken unless a demand is made, and the demand may apparently be made at any time after the expiration of three months from the date of the notice of apportionment. Therefore when works were done and the amount apportioned in June, 1876, but no demand was made on the owner until the 31st December, 1878, it was held that a summons for payment was in time when brought on the 14th May, 1879. *Marr v. Greenwich Board of Works*, 44 J. P. 424; *Wortley v. St. Mary, Islington (Vestry of)*, 51 J. P. 165; *Prescott v. Nicholson*, 60 L. T. (n.s.) 563; 53 J. P. 597; 5 T. L. R. 276.

It may be added here, that the six months' limitation does not apply to the enforcing of the charge on the premises in respect of these expenses which is created by section 257, *post*. *Tottenham Local Board v. Rowell*, 15 Ch. D. 378; 50 L. J. Ch. 99; 43 L. T. (n.s.) 616; 29 W. R. 36.

Such a charge may be enforced by action brought within twelve months after the completion of the works. *Hornsey Local Board v. Monarch Investment Building Society*, 24 Q. B. D. 1; 59 L. J. Q. B. 105; 61 L. T. (n.s.) 867; 38 W. R. 85; 54 J. P. 391; 6 T. L. R. 30.

In a case heard by the county court judge of Liverpool (F. J. Collier, Esq.), work had been done by a local board under this section, and notice of apportionment was served on 29th March, 1878. On the same day a demand of the amount was served. Proceedings to recover the amount were instituted in the county court on the 7th October, 1878, and it then transpired that a second demand had been made on the 6th August. His Honour, in a considered judgment, held that the first demand was a nullity, as there was no liability to pay until the expiration of the three months after notice of apportionment. The second demand was, therefore, a good one, and the proceedings were in time. This he considered to be the result of *Greece v. Hunt*, *supra*. In *Wilson v. Bolton (Mayor of)*, *post*, p. 196, the notice of apportionment and the demand of payment had been served at the same time, but no objection was taken in argument on that ground, and so far as it was inconsistent with *Greece v. Hunt*, it must be considered to be overruled. *West Derby Local Board v. Bell*, 42 J. P. 812. The correctness of this decision was established in *Simcox v. Handsworth Local Board*, 8 Q. B. D. 39; 51 L. J. Q. B. 168; 30 W. R. 723; 46 J. P. 260. It was there held that the notice of apportionment concluding with a demand of payment was not a notice of demand within section 257, and that the time within which proceedings must be taken does not run from such demand.

Note to Section 150. And in *Re Bettsworth and Richer's Contract*, 37 Ch. D. 535; 57 L. J. Ch. 749; 58 L. T. (N.S.) 796; 36 W. R. 544; 52 J. P. 740, NORTH, J., said: "It is quite true that the owner cannot be compelled to pay till the total costs have been made out and apportioned between the owners, and notice has been served and he has had three months to dispute the apportionment, and at the end of the three months has had written demand served upon him."

If the complaint to recover the expenses is made in time, it is no objection to the validity of a summons that it is issued more than a year after such complaint. *Sincoz v. Handsworth Local Board*, *supra*. Of course, if a demand has been made and the time has begun to run, it will not be extended by making a second or subsequent demand. See *Harpin v. Sykes*, 49 J. P. 148.

In a case where the justices declined to make an order for payment, the board applied for and obtained a case under 20 & 21 Vict. c. 43. The respondent took no part in the statement of the case, and did not appear in support of the justices' decision. The court decided in favour of the appellants, and it was held that the respondent might be ordered to pay the costs of the appeal. *Wednesbury Local Board v. Stephenson*, 33 L. J. M. C. 111; 10 Jur. (N.S.) 151; 12 W. R. 414; 9 L. T. (N.S.) 731; 28 J. P. 261.

It was held that when owners were liable for paying expenses under 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77, the vestry could not, in their discretion, charge the expenses upon the general rates. *Dryden v. Putney (Overseers of)*, 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40 J. P. 263; and see per JESSEL, M.R., in *Taylor v. Oldham (Corporation of)*, 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 303. Accordingly, the district board were ordered to restore to the general rate the amount they had, in fact, so expended, and to levy the same upon the owners of the adjoining houses and land according to the Act. *Attorney-General v. Wandsworth District Board of Works*, 6 Ch. D. 539; 46 L. J. Ch. 771.

A metropolitan district board were held entitled to recover as costs incidental to the paving, &c., under this section, the costs of serving notices of apportionment, obtaining names of owners, collection of amounts, advertisement and printing expenses. *Poplar Board of Works v. Love*, 29 L. T. (N.S.) 915; 38 J. P. 246. But this decision was given with reference to 25 & 26 Vict. c. 102, s. 77, which enables the board to recover all incidental costs and expenses. In the text the sum which may be recovered seems to be confined to the expenses of executing the work, and *quære* whether this includes incidental expenses such as those above mentioned. See, however, *Walthamstow Local Board v. Staines*, *ante*, p. 189; and compare the provision in 55 & 56 Vict. c. 57, s. 9, *post*.

As to the effect of the refusal to order expenses on the ground that the street is a highway, &c., upon a subsequent application under this section, see *Reg. v. Hutchins*, 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. (N.S.) 364; 29 W. R. 724; 45 J. P. 504.

For a case in which a local board were held to be estopped from proceeding summarily, see *Gould v. Bacup Local Board*, 50 L. J. M. C. 44; 44 L. T. (N.S.) 103; 29 W. R. 471; 45 J. P. 325.

As to the right to recover from a local board sums paid under this section by mistake, see *Midland Railway Company v. Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 787; and see also *Moore v. Fulham Vestry* [1895], 1 Q. B. 399; 64 L. J. Q. B. 226; 71 L. T. (N.S.) 862; 43 W. R. 277; *Self v. Hove Commissioners*, 64 L. J. M. C. 217; 72 L. T. (N.S.) 234; 43 W. R. 300; 59 J. P. 103.

(m) OWNERS IN DEFAULT.—See note (f), *supra*.

The Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 77 and 96, make the paying expenses recoverable by action from the present or future owners of the premises, or from any person who then or thereafter occupies the premises. The vestry of B. had recovered a judgment against a former owner of premises in respect of such expenses, which remained unsatisfied. It was held that such judgment was no bar to a subsequent action against the defendant, who occupied the premises as tenant to a succeeding owner. *Bermondsey (Vestry of) v. Ramsey*, L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. (N.S.) 429; 19 W. R. 774; 35 J. P. 567. Under the same Act it was held that the expenses might be recovered from the mortgagee in possession as owner, notwithstanding that another person was owner at the date when the improvement was resolved upon; and that the expenses were a charge on the premises (see section 257, *post*), and that the amount ought to be recovered from future owners, although there had been no arrangement to accept payment by instal-

ments. *Plumstead Board of Works v. Ingolby and Others (Trustees of the Planet Building and Investment Society)*, L. R. 8 Ex. 174; 42 L. J. Ex. 136; 29 L. T. (n.s.) 375; 21 W. R. 817; 37 J. P. 759, affirming L. R. 8 Ex. 63; 42 L. J. Ex. 50; 27 L. T. (n.s.) 656; 31 W. R. 77. As to the liability of successive owners under a local Act, see *Blackburn (Corporation of) v. Micklethwait*, 54 L. T. (n.s.) 539; 50 J. P. 550.

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The expenses cannot be recovered from one who, though the owner of premises when notice was first given by the urban authority, has ceased to be owner before the completion of the works. *Reg. v. Swindon Local Board*, 4 Q. B. D. 305; 48 L. J. Q. B. 119; 40 L. T. (n.s.) 424; 27 W. R. 732; 43 J. P. 431. "I cannot think it was ever intended by the legislature that when the owner has parted with his property, and somebody else is in possession of it, and therefore getting the benefit of the work done, and who ought, therefore, to pay the expenses incurred, it should be competent for the local authority to follow him up wherever he may have gone and hold him personally liable. I think that defect is remedied by section 257, which treats owners upon whom notice was originally served and who are owners at the time the work is completed, and the expenses demanded, as the persons upon whom the local board shall be able to come for the expenses." Per COCKBURN, C.J. These words were explained by NORTH, J., in *Re Bettesworth and Richer's Contract*, 37 Ch. D. 535; 57 L. J. Ch. 749; 58 L. T. (n.s.) 796; 36 W. R. 544; 52 J. P. 740. He pointed out that in *Reg. v. Swindon Local Board* the same person was owner both when the work was completed and when the demand was made. But he held that when there was a change of ownership after the completion of the works and before demand, the liability was upon the person who was owner when the works were completed. In that case leasehold houses in an urban district, abutting partly on a private road, were sold on an open contract. At the date of the sale works had been done by the local board under this section. The final demand for payment of the sum apportioned in respect of the premises was served after the purchase ought to have been completed. It was held that the apportioned expenses became a charge on the premises at the date of completion, and as between the vendor and purchaser were payable by the vendor. Compare with this decision *Egg v. Blayney*, 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. (n.s.) 65; 36 W. R. 893; 52 J. P. 517. That case related to the expenses of paving a new street in the metropolis where such expenses are not a charge on the premises. It was held, therefore, that if the owner sells the premises while the expenses are unpaid and conveys as beneficial owner, and the purchaser is compelled to pay the expenses, he cannot recover from the vendor under the implied covenant against incumbrances. See also *Re Field*, W. N. (1888), p. 36; and the observations on *Re Bettesworth and Richer's Contract* in *Hornsey Local Board v. Monarch Investment Society*, 24 Q. B. D. 1; 38 W. R. 85; 54 J. P. 391. The case of *Reg. v. Swindon Local Board* was distinguished in *Tottenham Local Board v. Williamson*, 62 L. J. Q. B. 322; 69 L. T. (n.s.) 51; 57 J. P. 614; 9 T. L. R. 372, where it was held that under the provisions of the Tottenham Local Board Act, 1890 (53 & 54 Vict. c. cxliv.), the person who received the rack rent at the date of the estimation and apportionment of the expenses was liable, notwithstanding that he had ceased to be the owner of the premises within the meaning of the local Act and section 4 of this Act incorporated therewith before the completion of the works.

As to the liability of a rent collector as owner, see *St. Helen's (Mayor, &c., of) v. Kirkham*, 16 Q. B. D. 403; 34 W. R. 440; 50 J. P. 647; as to the liability of a receiver as owner, see *Bacup (Corporation of) v. Smith*, 44 Ch. D. 395; 59 L. J. Ch. 518; 63 L. T. (n.s.) 195; 38 W. R. 697.

(n) APPORTIONMENT.—An apportionment was made and notice given to an owner that his proportion was 20*l.* 2*s.* He did not pay, and a complaint was made before justices, when it was objected that the apportionment was bad, on the ground that the expenses of the two streets had been lumped together, and the aggregate amount divided among the owners in the two streets, and the justices dismissed the complaint on that ground. The surveyor then made a fresh apportionment, and a notice was served on the owner that his proportion was 19*l.* 11*s.* He gave notice that he disputed the apportionment, and the matter came before justices under a section corresponding to section 181, *post*. On a case stated by the justices it was held that the first apportionment was a nullity, and the surveyor, not being *functus officio*, was right in making a fresh apportionment. *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. (n.s.) 579; 19 W. R. 1079; 35 J. P. 565. Where an apportionment was signed by B., who was not then surveyor, having being superseded previously, the board on discovering the mistake issued a fresh notice and

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apportionment signed by their actual surveyor, treating the former notice as a nullity. It was held that the board had acted properly. *Sykes v. Huddersfield (Mayor, &c., of)*, 35 J. P. 614. Where a local Act enacted that the proportion in which the expenses were to be apportioned was to be ascertained and settled by the corporation, it was held that the fact that the apportionment had been corrected by the surveyor to the corporation after it had been approved by the corporation did not invalidate it. *St. Helen's (Corporation of) v. Riley*, 47 J. P. 471. An urban authority acting under this section served the defendant and other frontagers of a new street with notices requiring them to execute certain works, including a particular work which could not be legally included in such notices. The notices not being complied with, the urban authority did the works, and apportioned the expenses incurred by them in so doing among the frontagers. A summons to recover from the defendant 650*l.*, the amount charged to him under the apportionment, having been dismissed by the magistrates, the urban authority made a second apportionment, deducting the expenses of the work which had been wrongly included, the amount charged to the defendant therein being 579*l.* They then brought an action under section 257 to establish a charge on the defendant's premises for 579*l.*, or in the alternative for 650*l.*:—Held, that the urban authority had power to make a second apportionment, and that, notwithstanding the dismissal of the summons, they were entitled to a charge on the premises for 579*l.* *Manchester (Mayor of) v. Hampson*, 35 W. R. 335, 591 (C. A.). The decision in *Cook v. Ipswich Local Board* was considered in *Shanklin Local Board v. Miller*, 5 C. P. D. 272; 49 L. J. C. P. 512; 42 L. T. (N.S.) 788; 29 W. R. 63; 44 J. P. 635. In that case the apportionment was made in respect of five roads. The defendant had taken no steps to dispute the apportionment, and when proceedings against him were instituted in the county court he contended that the apportionment was bad in law. A case was stated for the opinion of the High Court. DENMAN, J., referring to the former decision, said that it was not intended to decide "that an apportionment which is otherwise good on the face of it, is necessarily a nullity, and may be treated as such in any court before which it may come, because two streets instead of one are included in the apportionment; but the court meant this, viz., that when that is the case, and the parties have come to the conclusion that the apportionment cannot be enforced, and the surveyor makes a fresh apportionment, the former one becomes a nullity in the sense that it cannot be enforced, and is useless for particular purposes and cannot stand in the way of a good apportionment. That is, to my mind, the full extent of the decision, and it is not a decision that, if no steps are taken to set aside or dispute the apportionment on the ground that the party charged is not liable, it may be treated as a nullity when it comes before the court." The court, therefore, held that the defendant was liable to pay the amount claimed. See also *Ex parte Wake; Reg. v. Recorder of Sheffield and Derby (Mayor, &c., of) v. Grudgings* cited, *ante*, p. 189, where *Cook v. Ipswich Local Board* was also discussed in the judgments. It appears from these cases that an apportionment if made in respect of the paving, &c., of more than one street, may be objected to under section 257, *post*, but that if this is not done the owner is liable for the amount apportioned.

Buildings and land belonging to the defendants abutted upon a new street which a metropolitan vestry ordered to be paved over half its breadth only, the part paved being that nearest the defendant's premises. The vestry apportioned the whole cost of paving upon the houses forming the defendant's side of the street, omitting those on the other side. It was held that the apportionment was invalid, and that the owners on both sides of the street ought to have been charged. *Mile End (Vestry of) v. Whitechapel (Guardians of)*, 1 Q. B. D. 680; 46 L. J. M. C. 138; 35 L. T. (N.S.) 354; 24 W. R. 719; 40 J. P. 565, affirming 45 L. J. M. C. 75; 34 L. T. (N.S.) 178; 24 W. R. 364. But this decision was given with reference to the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 77, which imposes a liability on the owners of houses forming the street, and on the land bounding and abutting on such street. The language used in the text is different, and where, therefore, an urban authority paved a footpath on one side of a street, and apportioned the cost among the owners on that side only, it was held that the apportionment was right. *Wakefield Urban Sanitary Authority v. Mander*, 5 C. P. D. 248; 28 W. R. 922; 44 J. P. 522. See, however, the Private Streets Works Act, 1892 (55 & 56 Vict. c. 57), s. 6, *post*, and a case decided thereon. *Clacton-on-Sea Local Board v. Young* [1895], 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. (N.S.) 877; 43 W. R. 219; 11 T. L. R. 118. And see now as to the metropolis, the Metropolis Management Act, 1862, Amendment Act, 1890 (53 & 54

Vict. c. 54), and *Paddington Vestry v. North Metropolitan Railway and Canal Company* [1894], 1 Q. B. 633; 63 L. J. Q. B. 316; 42 W. R. 223; 58 J. P. 413; 10 R. 41.

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There does not appear to be any limitation of the time within which an apportionment must be made. *Bradley v. Greenwich District Board of Works*, 3 Q. B. D. 384; 47 L. J. M. C. 111; 38 L. T. (N.S.) 849; 26 W. R. 693; 42 J. P. 725.

It should be observed, however, that delay in making the apportionment will not extend the time for bringing an action to enforce the charge on the premises under section 257. Such an action must be brought within twelve years after the completion of the works. See *Hornsey Local Board v. Monarch Investment Building Society*, 24 Q. B. D. 1; 38 W. R. 85; 54 J. P. 391; 6 T. L. R. 30.

(o) ARBITRATION.—Section 257, *post*, limits the time within which the notice of dispute is to be given. See *Hesketh v. Atherton Local Board*, L. R. 9 Q. B. 4; 43 L. J. M. C. 37; 29 L. T. (N.S.) 530; 38 J. P. 149.

If a notice is given disputing the apportionment no proceedings can be taken to recover the expenses of the works until the dispute has been determined by arbitration. *Sandgate Local Board v. Keene* [1892], 1 Q. B. 831; 61 L. J. Q. B. 755; 66 L. T. (N.S.) 741; 56 J. P. 484.

A defaulting owner, on receiving notice of apportionment, sent to the urban authority a letter which appeared to be rather an objection to the prime cost of the work than to the mode in which that prime cost was apportioned, but it was held that as the letter was treated by the urban authority in letters to the owner and in a resolution of the urban authority, as a good notice disputing the apportionment, it must be regarded as such and that the authority were bound to go to arbitration before commencing an action to recover the apportioned amount. Another defaulting owner disputed the claim of the urban authority in general terms and this was held a good notice disputing the apportionment. *Folkestone (Mayor, &c., of) v. Brooks*; *Same v. Ladd* [1893], 3 Ch. 22; 62 L. J. Ch. 863; 69 L. T. (N.S.) 403; 58 J. P. 53.

The arbitration here referred to has reference not to a dispute between the frontagers generally on one side, and the urban authority on the other, but a dispute in which the owner of a particular set of premises complains of the apportionment as regards himself personally. There must be as many separate arbitrations as there are disputing owners, for every disputing owner may appoint an arbitrator. Therefore, an award between one of several frontagers called upon to pay the expenses of paving a street and an urban authority, by which the arbitrator has altered not merely the assessment upon the particular frontage, but the assessment in regard to all the frontages, is not binding upon a frontager not a party to the arbitration, so as to entitle the urban authority to recover from him the sum which would be due from him on the footing of the altered assessment. *Tunbridge Wells Local Board v. Ackroyd*, 5 Ex. D. 199; 49 L. J. Ex. 403; 42 L. T. (N.S.) 640; 28 W. R. 450; 44 J. P. 504.

The text only authorises an arbitration in respect of the proportion to be borne by a defaulting owner, and not in respect of any question as to the expenses being reasonable or properly incurred by the local authority. *Bayley v. Wilkinson*, 33 L. J. M. C. 161; 16 C. B. (N.S.) 161; 12 W. R. 797; 10 L. T. (N.S.) 543. When a dispute as to the apportionment comes before justices as arbitrators under section 181, *post*, and equally when the matter comes before them on a complaint to enforce payment, they have no jurisdiction to enquire into the question whether the amount alleged has been actually incurred. If the appellant is aggrieved by the alleged overcharge, his remedy is by appeal to the Local Government Board under section 268, *post*. *Cook v. Ipswich Local Board*, *ante*, p. 189. See, however, on this point, *Sandgate Local Board v. Keene*, *supra*. It has been held with reference to the Metropolitan Management Acts, 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77, that the principle upon which the expenses have been apportioned cannot be questioned before any tribunal. *Nesbitt v. Greenwich Board of Works*, L. R. 10 Q. B. 465; 44 L. J. M. C. 119; 32 L. T. (N.S.) 762; 24 W. R. 223; 39 J. P. 582; *Stotesbury v. St. Giles, Camberwell*, 57 L. J. M. C. 114; 59 L. T. (N.S.) 473; 53 J. P. 5. See, however, *Reg. v. Marsham* [1892], 1 Q. B. 371; 61 L. J. M. C. 52; 65 L. T. (N.S.) 778; 40 W. R. 84; 56 J. P. 164; 8 T. L. R. 3. A notice to pave and a notice of apportionment are not, but a demand of payment is, a *decision* within that section from which an appeal lies to the Local Government Board under section 268, *post*. *Reg. v. Local Government Board*, 9 Q. B. D. 600; 51 L. J. M. C. 121; 46 J. P. 820, affirmed on appeal, 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. (N.S.) 173; 31 W. R. 72; 47

Note to Section 150. J. P. 228; *Ex parte Wake*; *Reg. v. Recorder of Sheffield*; *Bournemouth Commissioners v. Watts*, ante, p. 189. And compare the provisions of 55 & 56 Vict. c. 57, post. For the provisions of this Act as to arbitration, see section 179, post.

(p) PRIVATE IMPROVEMENT EXPENSES.—See section 213, post.

The construction of this clause is not clear, and it has been interpreted in two ways. By some it has been considered that in declaring the expenses to be private improvement expenses, this should be done in respect of each separate premises; in other words, that the apportionment should be made in any case in order to determine the extent to which each owner is liable according to the frontage of his premises. Upon this being done, the expenses so determined may either be recovered from the owners, or they may be declared to be private improvement expenses in any one or more cases. The amount actually recovered from an owner would thus be the same whether he had to pay the sum apportioned on him at once, or by means of a private improvement rate. This opinion is based on the ground that the object of the section is to impose a liability according to frontage, and that section 215, which enables any owner to redeem private improvement expenses, implies that the expenses, so far as he is concerned, have been already fixed and determined. It is also urged that section 257 contemplates an apportionment in every case, and that the contrary opinion deprives him of the important rights which the statute confers as to disputing the apportionment. The other view is that the local authority have a discretion either to apportion in the ordinary way according to frontages, or to take the total expenses, ascertain the sum payable in each year with the addition of interest, and then make a rate upon the several premises according to their rateable value, frontage as an element in determining liability being rejected altogether. This opinion is supported by the punctuation of the clause, and it is not unworthy of observation that the language of the clause differs from that in the Public Health Act, 1848, s. 69. It is by no means easy to decide between the two possible constructions of the clause. In the absence of express authority an opinion must be advanced with hesitation, but it is submitted on the whole that the first is the more correct construction. The two cases hereafter mentioned in so far as they bear upon the point are in favour of this view.

A local board demanded from an owner his proportion of the expenses in January, 1861. This amount not having been paid, on the 25th August, 1870, the board resolved that it should be declared private improvement expenses; and in September, 1870, they declared these expenses to be payable by annual instalments. It was held that the demand in 1861 amounted to an election to treat the amount due as a debt from the owner, and that they had no power to declare it to be private improvement expenses. *Wilson v. Bolton (Mayor, &c, of)*, L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. (N.S.) 597; 36 J. P. 405.

Where an urban authority gave a notice in the form given in Schedule IV. Form G., but added to the notice words not in the form to the effect that if the owner neglected to do the work they would do it, and declare the expenses of such work to be private improvement expenses, it was held that they were estopped by the terms of their notice from taking summary proceedings for the recovery of these expenses. *Gould v. Bacup Local Board*, 50 L. J. M. C. 44; 44 L. T. (N.S.) 103; 29 W. R. 471; 45 J. P. 325.

(q) FOOTPATH.—The meaning of the paragraph was thus explained in *Maude v. Baildon Local Board*, 10 Q. B. D. 394; 48 L. T. (N.S.) 874; 47 J. P. 644, by POLLOCK, B.: "Its effect is not to say that wherever there is a (public) footpath running parallel the rest of the ground is in such a case to be deemed a street. It merely means to say that in all those cases in which the magistrates could properly find the residue to be a street, that power of so finding is not to be taken away in consequence of the fact that there is a public footpath."

In proceedings under this section it appeared that the street was formed by an old footpath and strips of land alongside, which had been recently added to widen it. The old footpath was repairable by the inhabitants at large. The justices found that the road was in part an ancient footpath or highway, but that it had been altered, widened, and added to, and houses having been built abutting thereon it was a street within the meaning of section 4 and this section; that the frontagers were liable to contribute to the expenses of improving it; and an order was accordingly made for the payment by the frontagers of such expenses. It was held that having regard to the terms of the section, the frontagers were chargeable with the expenses of

improving the whole street, and not merely such part of it as had been added to the ancient highway, and that the order was valid. *Evans v. Newport Urban Sanitary Authority*, 24 Q. B. D. 264; 59 L. J. M. C. 8; 61 L. T. 684; 38 W. R. 400; 54 J. P. 374.

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151. The incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor,^(a) shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.^(b)

Exemption
from expenses
under last
section of
incumbent of
church, &c.

This section does not apply to any district in which the 55 & 56 Vict. c. 57, has been adopted. See section 25 of that Act, *post*.

(a) The statute which provides for the exemption from poor rate of churches and chapels is 3 & 4 Will. 4, c. 30. It provides that no person shall be rated, or shall be liable to be rated, or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provisions of any Act or Acts now in force. Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any part of such churches, district churches, chapels, meeting houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage. (Section 1.) Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor. (Section 2.)

For the definition of a Sunday school, see 32 & 33 Vict. c. 40, s. 2.

So far as the text goes, it only exempts the incumbent or minister; therefore, the trustees, other than the incumbent or minister, would be liable. The defendants were the trustees of a chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purposes of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members; but the money received did not cover the cost of the entertainments. A bazaar and sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to the defendant B. and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under section 150 requiring them to pave, &c., the portion of the street upon which the chapel abutted, the complainants executed the work themselves, and obtained an order of justices for the repayment by the defendants of the expenses thus incurred. It was held that the defendants were the "owners" of the premises when the works were completed within the meaning of section 257 of the Act, and that they did not come within the meaning of this section, which exempts from liability "the incumbent or minister of any church, chapel, or place appropriated to public religious worship," and that the order of the justices was, therefore, rightly

Note to Section 151. made. *Hornsey Local Board v. Brewis*, 60 L. J. M. C. 48; 64 L. T. (N.S.) 288; 55 J. P. 389; W. N. (1890) 189; 7 T. L. R. 27.

By 8 & 9 Vict. c. 70 (The Church Building Act, 1845), s. 13, the "freehold of the site of every church" of which the commissioners therein mentioned shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated. It was held that upon such consecration the whole of the land so conveyed to the Commissioners vested in the incumbent; that the Commissioners ceased to be the owners of it, and were, therefore, not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street. *Plumstead District Board of Works v. Ecclesiastical Commissioners* [1891], 2 Q. B. 361; 64 L. T. (N.S.) 830; 39 W. R. 700; 55 J. P. 791.

It was decided in *Bowditch v. Wakefield Local Board*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 25 L. T. (N.S.) 88; 36 J. P. 197, that a national school is not exempt, and that one of the trustees is liable to pay the proportion of the expenses in respect of such school. A school board are also liable in respect of their schools. *London School Board v. St. Mary, Islington (Vestry of)*, ante, p. 13. 32 & 33 Vict. c. 40, provides that every authority having power to impose or levy *any rate* upon the occupier of any building used exclusively as a Sunday school or ragged school *may* exempt such building or part of a building from *any rate* for any purpose whatever which such authority has power to impose or levy. But *quære* whether the proportion of expenses under the last section is a *rate* within the meaning of this Act.

A burial ground which is not attached to any church or chapel is not exempt under this section, though it is partially exempt from poor or local rates under 18 & 19 Vict. c. 128, s. 15.

Under a local Act which required the churchwardens or chapelwardens for the time being of any parochial church or chapel to pay the paving rates assessed upon such church or chapel, it was held that a district church erected under 6 & 7 Vict. c. 37, was not exempt from being rated, and the churchwardens were liable to pay the rates although they had no parochial funds for that purpose. *Mills v. Rydon*, 10 Ex. 67; 23 L. J. Ex. 305; 2 C. L. R. 1045; 18 J. P. 633.

There is no such exception as this in the metropolis. The trustees of a dissenting chapel were, therefore, held liable under 18 & 19 Vict. c. 120, s. 105. *Caiger v. St. Mary, Islington*, 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 29 W. R. 538; 45 J. P. 570; *Wright v. Ingle*, ante, p. 186. But it was otherwise held with respect to a church which was consecrated and so dedicated to permanent and unalterable uses. *Angell v. Paddington (Vestry of)*, L. R. 3 Q. B. 714; 16 W. R. 1167; 9 B. & S. 496; 32 J. P. 742. So also with respect to a cemetery, part of which was consecrated. *St. Giles's, Camberwell (Vestry of) v. London Cemetery Company* [1894], 1 Q. B. 699; 63 L. J. M. C. 74; 70 L. T. (N.S.) 734; 42 W. R. 446; 58 J. P. 382; 10 T. L. R. 270.

(b) The previous section requires the authority to give notice to the owner and occupier of the premises to make the street, and in their default empowers them to do the work themselves. This proviso, therefore, deals with the case where, the minister being exempt, there may be no *owner* liable to do the work, and consequently no default.

Power to declare private streets when sewered, &c., to be highways.

152.(a) When any street within any urban district not being a highway repairable by the inhabitants at large (b) has been sewered, levelled, paved, flagged, metalled, channelled, and made good and provided with proper means of lighting to the satisfaction of the urban authority, (c) such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; (d) and every such notice shall be entered among the proceedings of the urban authority.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors (e) of such street, by notice in

writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor. (e) Section 152.

(a) The Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 51, provides that where Part III. of that Act is adopted the above section shall be repealed, and the following provisions shall be substituted in lieu thereof:—(1) Whenever all or any part of the works mentioned in section 150 of the Public Health Act, 1875, have been executed in a street or part of a street under that section by an urban authority, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may, by notice to be fixed up in such street or part of a street, declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large. (2) Provided that no such street shall become a highway so repairable if within one month after such notice has been put up the owner, or the majority in number or value of owners of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint owners shall be reckoned as one owner.

(b) As to the meaning of these words, see *ante*, p. 181.

(c) Note the use of the copulative. This section is not a complement to section 150. In order that a local authority may declare a street, not repairable by the inhabitants at large of their district, to be a highway, so that it may become repairable by the inhabitants at large, it is necessary that each of the works specified in section 152 shall, at the time of declaration, have been executed upon the street to the satisfaction of the local authority. A local authority has not, under this section, any discretion as to which of the works mentioned in the section they will require to be executed. This discretion is limited to their being satisfied with the efficiency of each description of work when done. *Semble*, that kerbing a road does not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and *semble*, that wooden paving does not come within the meaning of any of the requirements of the section. *Attorney-General v. Bidder*, 47 J. P. 263. The decision in the case just cited as to the meaning of the word *paving* is no longer law, for by the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 11, sub-sect. 2, *post*, it is provided that a street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind, shall be deemed to have been paved within the meaning of the Public Health Acts: Provided that a street shall not be deemed to be paved to the satisfaction of the urban authority unless it is paved with such kind of paving as the local authority shall consider suitable for the street. In *Saunders v. Brading Harbour Improvement Railway and Works Company*, 52 L. T. (N.S.) 426, the defendants agreed to construct a road over land of the plaintiff, who was to grant the defendants a right of way over the road when completed, and to permit it to be declared a public highway by the local board. The defendants were to make the road according to a plan and specification already approved by the local board, and to do all things necessary to carry out a resolution passed by the board that the road should six months after completion to their satisfaction be declared by the board a public highway. The specification provided that the pathways should be gravelled, and did not provide for means of lighting. After completion of the road the board were advised that the road did not comply with the requirements of this section, inasmuch as it was not flagged nor provided with means of lighting, and they withheld their sanction to its being declared a public highway. The plaintiff brought an action claiming specific performance by the defendants of the agreement on the ground that they had not done all things necessary to enable the board to declare the road a public highway, and claiming damages:—Held, that inasmuch as to compel the defendants to construct the road so as to conform with the provisions of the Act would be to enforce performance of terms at variance with the agreement and entirely outside the contemplation of the parties, specific performance could not be ordered. Whether the plaintiff would have been entitled to damages if any had been shown, *quære*.

(d) This is a substitute for the provision in the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 23, relating to the dedication of roads to the public.

A landowner in a district under the Public Health Act, 1848, gave notice to the local board of his intention to dedicate a certain road as a highway, to which the

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board replied that they would not adopt the road as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The landowner, however, obtained and enrolled the certificate of two justices under 5 & 6 Will. 4, c. 50, s. 23, and the public then used the road, which was kept in repair by the landowner for twelve months; after which, it being out of repair, an indictment was preferred against the parish. It was held that the inhabitants were not liable, inasmuch as the road had not become a highway; for that, assuming 5 & 6 Will. 4, c. 50, s. 23, to apply to the case, the road had not been made to the satisfaction of the local board, who were the surveyors. *WIGHTMAN, J.*, expressed an opinion that section 23 was not inconsistent with the Public Health Act, for the board had a discretion as to the amount and kind of repairs to be done to the road, and they might require the road to be paved, &c., having reference to those sections of the Act of 1848 corresponding with sections 150, 152. *Reg. v. Dukinfield*, 32 L. J. M. C. 230; 4 B. & S. 158; 27 J. P. 805.

No right or liability to repair on the part of a highway authority exists in the case of a road dedicated to the public since 1835 unless the requirements of 5 & 6 Will. 4, c. 50, s. 23, or of this section have been complied with. *Eyre v. New Forest Highway Board*, 56 J. P. 517.

There is no definition of the word *proprietor*, which is not a legal term having any distinct meaning. See *Lister v. Lobley*, 7 A. & E. 124; 6 L. J. K. B. 200, where it was held, in a clause giving compensation to *owners or proprietors*, that these words applied not only to the owners in fee simple, but to lessees for terms of years also. In *Rossiter v. Miller*, 5 Ch. D. 648; 46 L. J. Ch. 228; 36 L. T. (N.S.) 304; 25 W. R. 890, *JESSEL, M.R.*, said: "Is there any doubt that, according to ordinary language, the word *proprietors* means *owners*, and the word *owners*, *proprietors*? Having regard to this and the preceding sections, the word as used in the text is probably equivalent to *owners*."

(e) If there be several proprietors, it is difficult to see how they can be other than joint proprietors. The legislature probably intended to provide for classes of several proprietors, in which case one person might be a proprietor of one part of the street, while several might be the joint proprietors of another part. In such a case there would be one vote in respect of each part. But if the question turn upon the proprietorship of one part, which belongs to several persons, they must all have separate votes.

It is presumed that the objection may be withdrawn, and the street be made a highway.

Power to
require gas
and water
pipes to be
moved.

153. Where for any purpose of this Act any urban authority deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks^(a) or gasworks laid in or under any street,^(a) they may by notice in writing^(b) require the owner of the pipes, mains, plugs, or works to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice: the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required:^(c)

Provided—

That no such alteration shall be required or made which will permanently^(d) injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks, are directed to be borne by the owner of such

pipes, or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.(e)

(a) For the definition of *waterworks*, see section 4, *ante*, p. 21; and for that of *street*, see the same section, *ante*, p. 12.

(b) See, as to the authentication and service of the notices, sections 266, 267, *post*.

(c) At their own expense.

(d) As slight or temporary injury may be done, there may in such case be a claim for compensation under section 308, *post*.

(e) This liability will not arise upon the action of the urban authority for their own purposes.

154. Any urban authority may purchase any premises(a) for the purpose of widening, opening, enlarging, or otherwise improving any street(b) or (with the sanction of the Local Government Board) (c) for the purpose of making any new street.(d)

Power to purchase premises for improvement of streets.

(a) See the definition in section 4, *ante*, p. 6. Notice that the urban authority have no compulsory powers similar to those of a metropolitan vestry (*Teuliere v. St. Mary Abbots, Kensington (Vestry of)*, 30 Ch. D. 642; 55 L. J. Ch. 23; 53 L. T. (N.S.) 422; 50 J. P. 53), or the commissioners of sewers in the city. *Gard v. Commissioners of Sewers*, 28 Ch. D. 486; 54 L. J. Ch. 698; 52 L. T. (N.S.) 827; *Lynch v. Commissioners of Sewers*, 32 Ch. D. 72; 55 L. J. Ch. 409; 54 L. T. (N.S.) 699; 50 J. P. 548; C. A., reversing *KAY, J.*, 34 W. R. 226.

(b) See the definition in section 4, *ante*, p. 12. See also note (a) to section 150, *ante*, p. 176.

(c) Application should be made in writing upon foolscap paper to the Board, under the hand of the town clerk or clerk of the local authority; no special form is required, but the necessity or the expediency of the proposal should be set forth. It should be addressed to the President of the Board under cover to the Secretary.

(d) As to the power to purchase the requisite land, see section 175 and subsequent sections, *post*.

It is to be observed that though the local authority can, under this section, add land to a highway, they cannot take away any land from the highway, even if such land has, by reason of a part added, become unnecessary. A highway cannot be stopped up or diverted except pursuant to the Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 84—91. *Reg. v. Platts*, 49 L. J. Q. B. 848; 43 L. T. (N.S.) 159; 44 J. P. 765; 28 W. R. 915.

155. When any house or building(a) situated in any street(b) in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line(c) in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith.(d)

Power to regulate line of buildings.

The urban authority shall pay or tender compensation to the owner(e) or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act.(f)

(a) See the definition of *house* and *building* in section 4, *ante*, p. 15.

(b) For the definition of a street, see section 4, *ante*, p. 12. See also note (c) to the next section. The word "street" is apparently used here in its ordinary sense of a road with buildings on each side.

For the proviso as to railway buildings, see section 157, *post*, p. 205.

(c) The line of street need not be a strict mathematical line; it means substantially such a line as shall preserve uniformity of appearance. Per *WILLES, J.*, in *Tear v.*

Note to Section 155. *Freebody*, 4 C. B. (N.S.), at p. 262; 31 L. T. (O.S.) 131; *Fear v. Freebody*, 6 W. R. 520; *Sear v. Freebody*, 22 J. P. 707.

The corporation of F. had power under a local Act to prescribe the line in which any house to be thereafter built or taken down for the purpose of being rebuilt or altered should be executed, on payment of compensation to the owner of any house required to be set back, and it was also provided that no new street to be thereafter laid out should be of less width than 40 feet, inclusive of footways, and in the case of existing streets, houses to be thereafter erected were to be set back so as to allow of a width of 40 feet. A temporary church, fronting a road less than 43 feet wide, having been pulled down with a view to erecting a permanent church, the corporation gave notice to the clergyman in charge at the time of a resolution passed by them that the road must be not less than 40 feet wide; but there was no statement that the additional width was to be gained on the side on which the church abutted, and it appeared that the street might have been widened on the side opposite without removing any buildings. Afterwards, but not until the foundations of the new church had been put in, the corporation prescribed a line of building which came within the limits of the church as designed:—Held, that they were too late, and could not restrain the erection of the church in the manner in which it had been commenced. *Corporation of Folkestone v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. (N.S.) 574; 21 W. R. 97; 37 J. P. 324.

Where a building has been taken down to be rebuilt, a building line may be prescribed under this section for any portion of it which has not been commenced, although other portions of it have been commenced, unless what has been commenced necessarily involves as a matter of construction a projection beyond the line afterwards prescribed. In the case in which this decision was given the defendants, being about to pull down a school and erect a new one, submitted plans to the local board. The local board objected to the plans, giving as a reason that they violated a bye-law which obliged a person laying out a street to lay it out of a certain width. This bye-law was not applicable, as South Lane, on which the school fronted, was not a new street. The defendants disregarded the objection, commenced their works on the 5th January, 1885, laid the foundations of the main wall towards South Lane on the 12th, and proceeded rapidly with the erection of it. On the 22nd January the local board prescribed a building line which did not interfere with the main wall, but would prevent the erection of certain annexes not then commenced, lying between South Lane and the main wall, which annexes were shown on the plans laid before the board. The defendants had ground enough to allow of the annexes being erected elsewhere. The defendants proceeded with the annexes, and the board brought their action to restrain them from building beyond the line, and to compel them to pull down what they had built beyond it. It was held that the commencement of the main building did not preclude the board from laying down a line which would prevent the erection of the annexes which had not then been commenced. It was held also that as the notice given by the board, though ineffectual for the purpose of empowering them to pull down the erection under section 158, *post*, gave the defendants to understand that the board objected on the ground that buildings according to the plan would make the street too narrow, the board had not done anything to induce the defendants to believe that they would not prescribe a building line, and that there was no equity to prevent the board from exercising their powers under this section on the ground that they had misled the defendants. *Newhaven Local Board v. Newhaven School Board*, 30 Ch. D. 350; 53 L. T. (N.S.) 571; 34 W. R. 172. The principle of this case was approved in *Attorney-General v. Hatch* [1893], 3 Ch. 36; 62 L. J. Ch. 857; 69 L. T. (N.S.) 469; 57 J. P. 825; 9 T. L. R. 513; 2 R. 533, where, however, the main question was as to the meaning of the words “taken down,” which the Court of Appeal decided meant “substantially taken down.” The facts were that the owner of a house in a street took out the front wall of the ground and first floors and removed the first floor with a view of turning the two lower storeys into one lofty shop, which was also to be extended behind the house. The second floor was not disturbed, but was shored up with timber, afterwards replaced by iron girders and brick piers. Shortly after the erection of the iron girders and brick piers had been completed the urban authority prescribed a building line and commenced an action to restrain the owner from building in front of it. And it was held by KEKEWICH, J., that the house had been substantially taken down, but that the urban authority had not prescribed the line in due time. But the Court of Appeal held (reversing KEKEWICH, J., on this point) that the house had not been substantially taken down, and that the power to fix a building line had, therefore, never arisen.

Several decisions have been given by the Court of Session in Scotland upon the

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construction of the corresponding section of the Scotch Act (25 & 26 Vict. c. 101), s. 162. In *Fraser v. Kennedy*, 4 Ct. of Sess. Cas., 4th series, p. 266, one K. was proprietor of a house forming the north-west corner of High Street and Church Square, Fort William. As originally built, this house stood back some feet from the line of the adjoining house, belonging to the British Linen Company, and had a small plot of ground in front of it about 11 feet long, separated from the street by a low railing fixed in a kerb stone. K. proposed to pull down the front wall of his house, and advance it to the site of the railing in front, which projected somewhat beyond the line of the adjoining premises. The Commissioners of Police of the burgh of Fort-William gave notice under the above section to K. that they required him in rebuilding to keep the new front wall of his house in a line with that of the adjoining house. Certain statutory procedure took place before the sheriff on the subject, but there being some doubt as to its regularity the Commissioners presented an ordinary petition for interdict against K. in the sheriff court at Fort William. This petition the sheriff refused. On appeal it was maintained (1) that section 162 of the statute by implication applied to the case of houses, the front wall of which retreated from the adjoining houses; and (2) that it applied just as much to the railing in front of the respondent's house as to the front wall of the house itself; and that as soon as the respondent commenced alterations on the line of his railing, which projected beyond the line of the adjoining house, the Commissioners were entitled to require him to set it back to that line, otherwise the provision of the statute would, in such a case as the present, be entirely abortive. The court held that the section of the statute upon which the proceedings were founded did not apply to the case, as there was no old building taken down which projected beyond the front wall of the buildings on either side, and as the railing was not a "building" in the sense of the statute. This decision was affirmed in H. L. 15 Scottish Law Reporter, 765. Pending the appeal to the House of Lords, K. brought an action for damages against the Commissioners in respect of their having wrongfully prevented him from proceeding with his building operations, and it was held that such an action would lie, although there was no averment of malice and want of probable cause. *Kennedy v. Fort William (Police Commissioners of)*, 5 Ct. of Sess. Cas., 4th series, p. 302; 15 Scottish Law Reporter, 191. In a later case, one division of a long street consisted on one side of public buildings (with a frontage four feet back from the general line of street) and of two adjoining houses, Nos. 2 and 4, occupied as one tenement, belonging to one proprietor (with a frontage in line with the general line of the street). In 1878 the proprietor applied for a warrant to rebuild the two houses on the same site, whereupon the police commissioners served a requisition requiring the new buildings to be rebuilt four feet back, in line with the adjoining public buildings. The owner did not take down either house, but in 1881 he again applied for a warrant to take down and rebuild the house No. 2, which did not adjoin the public buildings. A second requisition was then made requiring him, as owner of the house, or building numbered 2 and 4, "and which house or building, or a part thereof, is about to be altered or rebuilt, and which house or building projects four feet beyond the line" of the adjoining buildings, and beyond the line of street from A. to B. (describing the division of the street), to set back the front of the buildings to be erected, to the line of the adjoining public buildings and of the street. In an action brought by the owner of the houses for declaration that he was entitled to build up to the line of his former frontage, the Lord Ordinary held that Nos. 2 and 4 were to be regarded as one building, and that the new building must be in line with the adjoining public buildings. The court held that Nos. 2 and 4 were to be regarded as one building, that the line of the adjoining building was to be taken as the line of the street, and that, therefore, the requisition must receive effect (*diss.* Lord CRAIGHILL), who held that Nos. 2 and 4 were to be regarded as separate buildings, and that the pursuer was entitled to rebuild No. 2 on its former site, as it did not project beyond No. 4, or beyond the general line of street, of which the adjoining public buildings formed a mere fraction. *Robertson v. Greenock Police Board*, 11 Ct. of Sess. Cas., 4th series, p. 304; 21 Scottish Law Reporter, 215.

(d) The erection in violation of this section may be prevented by injunction, or, if complete, will subject the builder to an indictment. But when the owner of a factory, being desirous of rebuilding it, submitted his plans to the local board, and, on the plans being approved, proceeded to pull down the factory and re-erect it according to the plans, it was held that the board could not, under the corresponding provisions of the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 35, require him to set back his premises, and the board were restrained from interfering. *Slee v. Bradford (Corporation of)*, 4 Giff. 262; 8 L. T. (N.S.) 491; 9 Jur. (N.S.) p. 815; 1

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N. R. 386 ; 27 J. P. 612. In a similar case the owner of a house after having, in accordance with a bye-law, left, on the 16th October, a plan of an intended new building, the local board passed a resolution that the plan was approved of, and that he should be offered 40*l.* for certain land of his thrown into the street. He refused to accept the 40*l.*, but proceeded with his works, and by the 26th October had pulled down the front wall of his house. On the 27th the board passed a resolution abandoning the terms before offered, and requiring him to set his frontage further back, notice being given under the above section. On the 27th November the owner proceeded with his building, and on the 21st December he was required to pull down his new building. It was held that, the local board having approved a plan and having allowed the owner to pull down the front wall of his house, they could not afterwards avail themselves of the powers given by this section. *Masters v. Pontypool Local Board*, 9 Ch. D. 677 ; 47 L. J. Ch. 797. In *Sutton Local Board v. Hoare*, 10 T. L. R. 586, an action was brought to restrain the defendant from rebuilding his premises so as to project beyond the line prescribed by the plaintiff urban authority, and the defendant alleged that the plaintiffs in prescribing the line had not acted *bonâ fide* in the exercise of their powers, because on each side of his premises there were comparatively new houses and the plaintiffs had not laid down any general line in that part of the street to be carried out under the compulsory powers of section 154. But NORTH, J., held that the injunction ought to go, as there was no obligation upon the plaintiffs to proceed under section 154.

(e) See the definition in section 4, *ante*, p. 6.

(f) See section 179, *post*.

Buildings not
to be brought
forward.
[Rep. by
51 & 52 Vict.
c. 52.]

156. *It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street or any part thereof beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same.*

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

The above section has been wholly repealed by the Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), which re-enacts it in an amended form. See the Act and the notes thereto, *post*. The text of the above section is here retained for comparison with the new enactment.

Power to
make bye-
laws respect-
ing new
buildings, &c.

157. Every urban authority may make bye-laws(*a*) with respect to the following matters ; (that is to say,)

- (1.) With respect to the level, width, and construction of new streets, (*b*) and the provisions for the sewerage thereof :
- (2.) With respect to the structure of walls, foundations, roofs, and chimneys(*c*) of new buildings(*d*) for securing stability and the prevention of fire, and for purposes of health : (*e*)
- (3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings : (*f*)
- (4.) With respect to the drainage of buildings, to water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings, (*g*) and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation ; (*h*)

And they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving

of notices,⁽ⁱ⁾ as to the deposit of plans^(k) and sections by persons **Section 157.** intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act)^(l) to remove, alter, or pull down any work begun or done in contravention of such bye-laws ;^(m) Provided that no bye-law made under this section⁽ⁿ⁾ shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament.

The above section has been greatly extended and amended by the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 23. Though that Act is itself set out hereafter in the present Work, it may be convenient here to state its provisions in order to show its bearing on the text. The section provides as follows :—

(1.) Section one hundred and fifty-seven of the Public Health Act, 1875, shall be extended so as to empower every urban authority to make bye-laws with respect to the following matters ; that is to say :—

The keeping waterclosets supplied with sufficient water for flushing ;

The structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation ;

The paving of yards and open spaces in connection with dwelling-houses ; and

The provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters.

(2.) Any bye-laws under that section as above extended with regard to the drainage of buildings, and to waterclosets, earthclosets, privies, ashpits, and cesspools, in connection with buildings, and the keeping waterclosets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section.

(3.) The provisions of the said section (as amended by this Act), so far as they relate to bye-laws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to the matters mentioned in sub-sections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of waterclosets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make bye-laws in respect to the said matters, and to provide for the observance of such bye-laws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of an order of the Local Government Board made on the day when this part of this Act is adopted ; and section one hundred and fifty-eight of the Public Health Act, 1875, shall also apply to any such authority, and shall be in force in every rural district where this part of this Act is adopted.

(a) See as to the making, confirming, and publication of bye-laws, sections 182—186; and as to the enforcing of them, section 251. It is presumed that though the urban authority may be otherwise empowered to make bye-laws on these subjects, they may nevertheless act under this section : see section 341, *post*.

The bye-laws made under this section, amended as above stated, are the most important in practice of those with which a local authority have to deal. It may be opportune, therefore, to remark here that unless the bye-laws themselves give the

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authority a dispensing power or discretion, the authority are bound by the bye-laws and cannot waive their requirements. See *Baxter v. Bedford*, 1 T. L. R. 424; *Reg. v. Newcastle-upon-Tyne (Mayor, &c., of)*, 60 L. T. (N.S.) 963; 53 J. P. 788; 5 T. L. R. 467. And see *In re Macintosh and Pontypridd Improvement Commissioners*, 61 L. J. Q. B. 164; 8 T. L. R. 121; affirmed in C. A., 8 T. L. R. 203.

(b) It has already been noticed that an ancient highway may become a new street within the meaning of this and other sections of the Act if houses are built along its sides so as to make it a street in the ordinary acceptance of the term. *Pound v. Plumstead Board of Works*; *Dryden v. Putney (Overseers of)*; *Robinson v. Barton Local Board*, ante, p. 14. See also *Hampstead Vestry v. Cotton*, 16 Q. B. D. 475; 55 L. J. Q. B. 213; 54 L. T. (N.S.) 441; 34 W. R. 244; 50 J. P. 453; and in H. L. 12 App. Cas. 1; 56 L. J. Q. B. 225; 56 L. T. (N.S.) 1; 35 W. R. 505; 51 J. P. 340; *Holden v. St. Mary, Islington (Vestry of)*, 2 T. L. R. 741. In *Robinson v. Barton Local Board*, JESSEL, M.R., said (21 Ch. D., at p. 632): "There are two ways in which a street may come into existence where there was no street before. A person may take a grass field, or a country lane (for, in my opinion, it makes no difference whether or not there was a public highway and lane, or a footpath existing before, which is thrown into the street, and is utilised, or whether there was nothing but a mere plot of grass land out of which a new roadway is made) he may take it and build continuous lines of houses so as to form what is commonly known as a street. When I say continuous lines, I do not mean that there are to be no breaks or intervals, but there must be a certain degree of continuity. A new street may arise in another way, and that is, where it is not from the first laid out as a street in a formal manner, but may be considered to grow up, so to say, of itself. This often happens where there is an existing highway, and people build houses along the sides of that highway, so that, without any intention of laying out a street, the street grows. When does it become a street? This question cannot be answered until you know the locality. It must be a question in each particular case when the road becomes a street. At some time or other it becomes a street, and as soon as it does so it is a new street and not the less a new street because some of the houses were built before it was a street." In the same case when before the House of Lords, Lord SELBORNE, C., referring to the definition of "street" in section 4, ante, p. 12, said "that the definition was not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there was nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." And he continued: "I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by *new street* a place which before had not that character, but which by the construction of buildings on both sides, or possibly on one side, has acquired it." 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 33 W. R. 249; 48 J. P. 276. And see *St. Giles, Camberwell (Vestry of), v. Crystal Palace Company* [1892], 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. (N.S.) 840; 40 W. R. 648; 57 J. P. 5.

"The words of sub-section (1) include the construction of the buildings and the buildings themselves and front gardens, or whatever else is at the side of the roadway." Per BRAMWELL, L.J., in *Baker v. Portsmouth (Mayor, &c., of)*, 3 Ex. D. 157; 47 L. J. Ex. 233; 37 L. T. (N.S.) 802; 27 W. R. 323; 42 J. P. 278.

"Whether an intended building is sufficient to make a street is a question of more or less. One house would not be sufficient. Whether the intended houses are sufficiently numerous and continuous is a question of degree, and must be a question of fact for the magistrate. When may the owner be said to have begun to lay out the road for that purpose? I do not think that if a person merely puts up a hoarding or leaves the way without any fence, or leaves the old fence untouched while he is building, he can be said to have laid out the road; but as soon as he begins to put up fences, and marks out the boundary, which he intends to be the permanent boundary between his building and the road, then he may be said to have begun to lay out the road for the forming of the street; and this also is a question of

fact for the magistrate." Per BLACKBURN, J., in *Taylor v. Metropolitan Board of Works*, L. R. 2 Q. B. 213; 36 L. J. M. C. 53; 31 J. P. 581; 15 W. R. 765. In that case several plots of land had in 1864 been sold for building purposes. These plots abutted on a lane which was an ancient carriageway, and had buildings at intervals, on both sides erected before 1862. The lane varied in width from 41 to 28 feet, which was the width opposite the plots, and on the other side of the road was a permanent enclosure belonging to a church, and other buildings erected before 1862. In July, 1865, A. bought the plots, houses having been erected on two of them, the front walls of the houses being 27 feet from the old wooden boundary fence of the lane. On September 26th he began to remove the fence which had been left untouched, and to substitute a permanent wall and railing. The magistrate having found that he thereby intended to lay out the road for building as a street, convicted him under 25 & 26 Vict. c. 102, s. 98, which requires a new street to be widened to the width of 40 feet. It was held, however, that this enactment would have been satisfied had A. set back his fence to a distance of 20 feet from the crown of the road, although the result would have been to leave the road less than 40 feet wide, if measured from the other side.

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This case may be usefully compared with one decided in the following year with reference to the same section. In the latter the respondent was the owner of land upon which he had in 1866 erected some houses, the gardens in the rear of which abutted upon an ancient lane, and some of the owners of land adjoining this lane had in 1867 begun to form it into a street for carriage traffic within the meaning of the section. The respondent himself had done no act towards forming or laying out the lane as a street for the purposes of carriage traffic, otherwise than by the removal in 1866 of an old bank and thorn fence and the substitution of an oak fence 3 feet within his own land, nor had he any intention of doing any such act, or of putting up any building fronting towards the lane:—Held, that he had not committed any offence against the Act, and was not bound to set back his oak fence so as to leave a space of 20 feet between it and the centre of the lane. *Metropolitan Board of Works v. Cleaver*, L. R. 3 C. P. 531; 37 L. J. M. C. 126; 18 L. T. (N.S.) 723; 16 W. R. 1016. It had previously been held that the section did not apply when new buildings abutted in the rear upon an old lane of less width than 40 feet. *Metropolitan Board of Works v. Cox*, 19 C. B. (N.S.) 445.

In a case where five houses had been built fronting a new road or way 7 feet wide, the defendant acquired the land opposite the houses and built along the edge of the land a wall 170 yards long. He was held rightly convicted of laying out a street of less width than that prescribed by the bye-laws. *Roberts v. Richards*, 54 J. P. 693. Lord ESHER, M.R., said: "I think what the defendant did was to construct a new street under the circumstances. . . . He seems to think that the person who takes the first step towards a new street should so lay it out that it should be for the benefit of others who afterwards join in completing the street. Why should the previous owners be made to contribute to the requirements of the new street if what they did at the time was nothing unlawful?"

With reference to what amounts to the laying out of a new street the same learned judge said, in *Robinson v. Barton Local Board*, 21 Ch. D., at p. 636: "It is often a difficult thing to say when a street begins to be a new street—that is, when it begins to alter its character. New streets may be made under different circumstances. The whole land on both sides may belong to one owner. Then suppose he conceives a design of making a new street, and has a plan drawn. To my mind, that does not begin the laying out of the street within the meaning of the Act of Parliament. The Act of Parliament is not concerned with what people do upon paper, but with what they do in point of fact and upon the land. When would such an owner begin to lay out and form a street? To my mind, he would do so when he built his first house, having the intention to go on to make a street. He would then have begun to lay out and form a street, and it would from that moment begin to be a street. But streets may be formed in another way. Supposing that along the line of that which would eventually be considered a street there are a great many owners. No one of them could make a plan for the whole, but it may be clear that all of them are intending to build with regard to and so as to utilise an existing roadway. How, then, will those people lay out and form a street? Each of them, by what he does on his own land, would be taking part in laying out and forming a street. Which of them begins? I should say the one who first begins to build begins to form a street, and if you find that there are several proprietors along a line, each of whom acts so that the tribunal comes to the conclusion that all of them intend to build in the same direction, then the tribunal would have the right to say that there is a common

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intention amongst all these people to build in a particular course which will produce a street, and, therefore, the first of them who, in virtue of that common idea, begins to build, is beginning to form and lay out a street, and he and all others are subject to the jurisdiction of the board. There is another case to which my lord has alluded, where there are several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build. One man at the end of the street may have begun to build, but the others have not built nor laid out their land as building land, nor advertised it as building land, nor done anything to show an intention to build. Then the street really forms itself, as it were, by gradual accretion without any common intent. In such a case you have to wait until you can see by the course of building that there is a common intent to build. The moment you see that, you come to the conclusion that a street has begun to be formed."

The owner of certain building land gave notice to the urban authority of his intention to lay out certain new streets, including a certain back street, and deposited plans of such streets. Notice was also given by the defendant, a builder, of his intention to dig and lay out the foundations of four cottages in the back street, and a plan of such street was deposited by him. In the plans deposited by the owner and builder, the back street, in which it was intended to build the cottages, was shown to be only 12 feet wide, whereas the minimum prescribed by the bye-laws was 18 feet. The authority accordingly gave the owner and the defendant notice of their disapproval of such plans, and on the latter proceeding to build the cottages according to the disapproved plans, the appellants took out a summons against the defendant for unlawfully laying out a new street of insufficient width, contrary to their bye-laws. This summons was dismissed; and on a case stated it was held to have been rightly dismissed, as the owner, and not the builder, was the person who had laid out the streets. *Sunderland (Mayor of) v. Brown*, 44 J. P. 831. Per HAWKINS, J.: "All that the builder was employed to do was to build certain cottages upon the line of a street already laid out."

T., having land upon which he proposed to build six houses, sent a notice and plan showing what he intended to do, and where a new street of 10 yards wide was to be. The board sanctioned the houses, and they were built. Some years afterwards T. was summoned for disobeying the bye-law in not leaving a space of 30 feet wide for the street. The fact was that his land extended only 9 feet in front of the houses, but this was not known to the board until afterwards. T. was convicted. It was held on a case stated that the conviction was wrong, and that the local board ought to have satisfied themselves before sanctioning the plan that T. had land of sufficient width to make the proposed new street when the houses should be completed. *Thompson v. Failsforth Local Board*, 46 J. P. 21.

W. had ground abutting on one side of a lane, 250 feet long and 6 feet wide, adjoining a town. There were no houses in the lane. W. built six cottages standing back 15 feet from the lane. The lane was within an urban district, the bye-laws of which required new streets (not being carriageways) to be 18 feet wide. W. was convicted of having laid out a new street contrary to the bye-laws. It was held that the conviction was wrong, the mere fact of six cottages being built in the lane not making it a new street. *Williams v. Powning*, 47 J. P. 486; 48 L. T. (n.s.) 672. It is to be observed that in this case the court considered the evidence and decided that there was no evidence to justify the finding of the justices that the street was a new street. But if there is any evidence the court will not inquire into its sufficiency, for the question is one of fact for the justices or magistrates to determine. See *Reg. v. Shiel*, 50 L. T. (n.s.) 590. See also *Gozzett v. Maldon Urban Sanitary Authority and St. George's Local Board (Bristol) v. Ballard*, *post*, and the observations on this subject in the notes on section 4, *ante*, p. 13.

An urban sanitary authority made the following bye-law:—"Every person who constructs a new street shall cause the kerb of each footpath in such street to be put in at such level as may be fixed or approved by the urban sanitary authority. No person shall commence the erection of a new building in a new street unless and until the kerb of each footpath therein shall have been put in pursuant to the preceding requirement. Every person offending against this bye-law shall be liable for each offence to a penalty of forty shillings." It was held that this bye-law was void as being unreasonable. "If it applied only to the particular piece of the street opposite to that on which a man might be going to build, there might be some ground for arguing that it was reasonable; but it is not so, for if it means anything it means that each owner must wait until the whole kerb is put in." Per GROVE, J.,

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"I doubt whether the authority has power to make these provisions with respect to matters which have been specifically provided for by the 150th section, since they amount to imposing on landowners an absolute duty to do certain things under pain of incurring a penalty, while that section merely provides that if they decline to do them there shall be no penalty, but the authority shall themselves do them and recover the expenses." Per HAWKINS, J. *Rudland v. Sunderland (Mayor, &c., of)*, 52 L. T. (N.S.) 616; 33 W. R. 164; 49 J. P. 359.

The Sunderland Local Improvement Act, 1885, by section 37, enacts that it shall not be lawful for any person, except with the consent of the corporation, to erect or build, or begin to erect or build, any new buildings abutting upon any new street or part of a new street, nor until the carriageway and footway of such new street, or part of a new street, shall have been formed to such a level and of such a width, and constructed and sewered to the satisfaction of the corporation, in accordance with section 150 of the Public Health Act, 1875. The appellants, who were builders, gave notice to the Sunderland local authority, the respondents, of their intention to lay out a certain new street, the plans for the construction of which were approved by the respondents. They subsequently gave notice that they intended to erect four new houses in that street, the plans of which were submitted to and approved by the respondents. The appellants began to erect these houses abutting upon or fronting that part of the new street which had been sewered, levelled, paved, metalled, flagged, and channelled to the satisfaction of the respondents; but the whole of the new street had not been constructed and made good to the satisfaction of the respondents within section 37 of the Sunderland Local Improvement Act, 1885. The appellants were summoned in respect of the infringement of that section, and were fined. They appealed:—Held, on appeal, that the conviction was right, and that, as the appellants had given notice to lay out the whole of a new street, the urban authority, under their local Act, were entitled to withhold their consent to the erection of any house or building abutting on the new street, unless the whole of the new street was constructed and sewered to their satisfaction. *Woodhill v. Sunderland (Mayor, &c., of)*, 51 J. P. 356; 57 L. T. 303.

The widening of an old approach to a block of buildings newly erected for workmen's dwellings, and let out in separate tenements, was held not to constitute the construction of a new street within the meaning of the Metropolis Management Act, 1882, s. 8. *Metropolitan Board of Works v. Nathan*, 54 L. T. (N.S.) 423; 34 W. R. 164; 50 J. P. 502.

This sub-section refers to the buildings on the side of the street as well as to the roadway. The word construction refers both to roads and buildings by the side of roads. Therefore a bye-law was held to be valid which provided that no building should be erected by the side of any new street, or to which any new street would form the only carriage approach until such street had been constructed to the approval of the board. *Baker v. Portsmouth (Mayor, &c., of)*, ante, p. 206. And see per Lord SELBORNE, C., in *Robinson v. Barton Local Board*, ante, p. 207. From the judgment in the latter case, however, it may be inferred that a bye-law cannot be made under this sub-section for the purpose of regulating the line of buildings, for the word *street* as here used means the public way, and not the distance from the external wall of a house (as distinct from its curtilage) on one side of the street to the external wall of the opposite house (if there is one) on the other side. The bye-law in that case provided that every new street should be laid out and formed of such width and at such level as the urban authority should in each case determine. The House of Lords held, reversing the decision of the Court of Appeal, that the word "width" in the above section and in the bye-law meant width of roadway, and not width between houses on each side of the street; and that the urban authority were not entitled under the above bye-law to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway.

The bye-laws of a local board provided:—"(4) Every person who shall lay out a new street shall so lay out such street that the width thereof shall be 40 feet at least." "(6) Every person who shall construct a new street shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards:—Held, that the 6th bye-law was *intra vires* and reasonable, and that it prevented a landowner from constructing a new street upon his land until he had provided an entrance to the new street of the specified width, even though the entrance could only be made upon the land of another person over whom he had no control:—Held also, that the "construction" of a new street

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included the building of the houses abutting on it, and, consequently, that the land-owner could not, until an adequate entrance had been provided, erect houses abutting on the proposed new street. *Hendon Local Board v. Pounce*, 42 Ch. D. 602; 61 L. T. (N.S.) 465; 38 W. R. 377.

In *Bromley Local Board v. Lloyd*, 66 L. T. (N.S.) 462; 56 J. P. 278, a person desired to construct a new street upon land to which he was entitled. The proposed entrance to the new street was a lane, which was a public road, of a width varying from 12 to 20 feet. The bye-laws of the local board in the district in which the proposed new street was situate provided:—(4) Every person who shall lay out a new street which shall be intended for use as a carriage-road shall so lay out such street that the width thereof shall be 40 feet at the least. (8) Every person who shall construct a new street shall provide, at one end at least of such street, an entrance of a width equal to the width of such street, and open from the ground upwards. KEKEWICH, J., held that the person proposing to construct the new street was under the obligation, before constructing the new street, to provide an entrance of the width prescribed by the bye-laws, and, further, that the fact that the entrance proposed was a public road did not alter the obligation above mentioned if the public road was of less than the prescribed width, and he, therefore, granted an *interim* injunction. But when the case was tried before WILLS, J., he gave judgment for the defendant on the ground that the entrance required by the bye-law meant merely a practicable way into the street. 9 T. L. R. 306.

The respondents, an urban sanitary authority, made bye-laws providing that every person who should lay out a new street exceeding 100 feet in length, should lay out such street as a carriage-road, with footways, and of a width of not less than 36 feet. The appellant was lessee of a piece of ground, together with a right of way over the adjoining road which was fifteen feet wide, for a distance of more than 100 feet, and he commenced to build two houses on the ground of which he was lessee, but did not widen the road over which he had a right of way to 36 feet. He was summoned by the respondents for laying out a new street of a width of less than 36 feet contrary to the bye-laws, and was convicted, but it was held on appeal that what the appellant had done in commencing to erect the houses on the piece of ground adjoining the road did not amount to laying out a new street, and the conviction was quashed. *Gozzett v. Maldon Urban Sanitary Authority* [1894], 1 Q. B. 327; 70 L. T. (N.S.) 414; 58 J. P. 229. And in another case, under similar bye-laws, the plaintiffs sought to restrain the defendants from laying out a new street contrary to the bye-laws under the following circumstances. In the plaintiff's district there was a narrow passage or lane, about 8 feet wide and 175 feet long, ending in a *cul-de-sac*. On its eastern side was a row of cottages, to the front entrances of which it gave access, and on its western side was a strip of land formerly used as gardens for the cottages on the eastern side. The defendant bought this strip of land, and built on it three houses fronting into a public thoroughfare out of which the passage or lane in question led, and the side of the corner house of the three abutted on the passage or lane. And it was held that, the question being entirely one of fact, there was no evidence that the defendant had made or was intending to make a new street, and an injunction was refused. *St. George's Local Board (Bristol) v. Ballard* [1895], 1 Q. B. 702; 72 L. T. (N.S.) 345; 43 W. R. 409; 59 J. P. 131; 11 T. L. R. 263.

The bye-laws of the defendant local board enacted that every person laying out a new street should, if it were a principal street, lay it out at least 36 feet wide, and in 1875 the board approved of the plan of an estate showing the street which was the subject of controversy, as intended to be laid out 36 feet wide. In 1887 the relator built three houses in the street according to plans approved by the board, and now sought an injunction to restrain the defendant Bell from building so as to cause the street to be of a less width than 36 feet. NORTH, J., refused an injunction on the ground that there was nothing to show that this was a principal street within the meaning of the bye-laws. *Attorney-General v. Pudsey Local Board and Bell*, 59 J. P. 329; 39 Sol. Journ. 315.

It is not necessary that the new street should be dedicated to the public. *St. Mary (Vestry of) v. Barrett*, ante, p. 14. See also *Bowles v. St. Mary, Islington*, ante, p. 14.

An urban authority made a bye-law directing that all new streets should be of a width of not less than 10 feet. Certain ways existed communicating with the backs of the houses, and used by the urban authority, who did the scavenging of the town, for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval to the urban authority showing ways, such as above described, of the width of 6 feet, and the urban authority, who

had published a bye-law under the Act prescribing 10 feet as the minimum width of new streets, refused to approve such plans. It was held, discharging a rule for a *mandamus* to compel the approval of the plans, that the ways in question were "passages" within the meaning of section 4, and, therefore, were "streets" within the meaning of that section, and, therefore, the urban authority had power by section 157 (1) to make bye-laws with respect to their width and construction, and the bye-law was valid. *Reg. v. Goole Local Board* [1891], 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. (N.S.) 595; 39 W. R. 608; 55 J. P. 535.

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A line of railway was situate in a deep cutting, and was crossed by a bridge. A line of houses terminated at the eastern end of the bridge, and after crossing the bridge there was but one cottage, and the roadway ceased to be a public thoroughfare, being closed by a private gate. It was held that the road ceased to be a new street within the meaning of 25 & 26 Vict. c. 77, at the eastern extremity of the bridge. *London, Brighton, and South Coast Railway Company v. St. Giles, Camberwell (Vestry of)*, *ante*, p. 184.

The Manchester Improvement Act (8 & 9 Vict. c. cxli.), s. 29, provided that no street should be made of less width than 24 feet; and section 30 provided that it should not be lawful to build within the borough any houses with their fronts facing each other, which should be separated from each other by a space of less than 24 feet wide. It was held that these provisions prohibited the erection in a street of two houses at the same time, with their fronts facing each other, within the prescribed distance, and did not affect the erection of buildings not in a street. *Reg. v. Sidebotham*, 28 L. J. M. C. 189; 33 L. T. (O.S.) 187; 23 J. P. 342.

The F. Improvement Act incorporated the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34). By section 69 of the former Act, it was provided that no new street to be hereafter laid out, should be of less width than 40 feet, but by the general Act, which came into operation in cases which were not provided for by any special Act, the extreme width of new streets intended for the use of carriages was fixed at 30 feet. A street had some years previously to 1873 been laid out with a roadway of 25 feet, but the corporation had given notice that they should enforce the clause providing for a width of 40 feet. They had recently, upon the application of the defendant, waived that notice and approved a carriageway of 25 feet. It was held, however, that section 69 was imperative, and that the corporation could not permit a deviation from the Act. It was also held, that though the road had been laid out previously, the corporation were not bound to interfere until the building operations were actually commenced and the width of the road definitely fixed. *Attorney-General v. Folkestone (Corporation of)*, W. N. (1873), p. 127.

In 1830, A. projected the formation of a sea-side town to be built on his land, and a plan was prepared showing the sites of various proposed roads, streets, and squares. In 1833 a private Act was passed, whereby the lands described on the plan were made a distinct parish for the purposes of the Act, and Commissioners were appointed in whom were vested all roads, streets, and ways, then made and used by the public, or hereafter to be made and adopted by the Commissioners under the Act. Before this Act passed A. had sold to B. several of the plots described on the plan, on which were delineated the sites of several of the proposed streets, &c. Before and after the Act numerous houses had been built, and some of the streets shown on the plan had been wholly or partially formed and adopted by the Commissioners, but no houses had ever been erected on the land sold to B., which was used as agricultural land. In 1868 the Commissioners gave B.'s devisees notice of their intention to take possession of the sites of the proposed streets, &c., and in 1871 they proceeded to take such possession. It was held, however, that they had no right to do so, there being no roads actually made for them to adopt, and the site as such not vesting in them. *Mackett v. Herne Bay Commissioners*, 37 L. T. (N.S.) 812.

S., having an old farmhouse with a shop front abutting on a lane, and other property near, gave notice to the urban authority of his intention to lay out a street, and submitted a plan which was approved, showing the alteration and proposed width of the new street, which involved the setting back of the shop and garden. He did nothing to carry out the plan, and two months later, put in a new shop front and rebuilt the garden wall on the old site. It was held that S. had done nothing contrary to the bye-law relating to the width of new streets, and had committed no offence. *Sunderland (Mayor, &c., of) v. Skinner*, 53 J. P. 660.

A street which leads out of and afterwards back into the same street, communicates at both ends with a public carriageway. *London County Council v. Edmundson*, 66 L. T. (N.S.) 200; 56 J. P. 343.

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(c) See the requirements of 3 & 4 Vict. c. 85, as to chimneys. By section 6 of that Act, "all withs or partitions between any chimney or flue shall be of brick or stone, and at least equal to half a brick in thickness," upon pain of forfeiting a sum of money. A subsequent local statute enacted that in the borough of H. "the chimney and flues of every new building shall be constructed in such mode and of such materials and dimensions as shall from time to time be determined or approved by the corporation," and then if no direction should be given by the corporation as to constructing chimneys, prescribed certain directions different from those in 3 & 4 Vict. c. 85, s. 6. The appellant, within the borough of H., built a chimney which was not in accordance with the provisions of 3 & 4 Vict. c. 85, s. 6, and was convicted before justices of an offence against that Act:—Held, that the subsequent local statute had not repealed 3 & 4 Vict. c. 85, s. 6, within the borough of H., and that the conviction was right. *Hill v. Hill*, 1 Ex. D. 411; 45 L. J. M. C. 153; 35 L. T. (N.S.) 860; 41 J. P. 183.

The provision as to bye-laws relating to chimneys is new. The sub-section does not, however, refer to rooms nor to the interior of buildings beyond what may be necessary in connection with the subjects mentioned.

(d) As to what is a new building, see section 159, *post*, p. 222, and the notes thereto. Observe that in the sub-section the word "site" is not used. The use of that term in the 41 & 42 Vict. c. 32, s. 16, gave rise to the difficulty which came before the court in *Blashill v. Chambers*, 14 Q. B. D. 479; 53 L. T. 38; 49 J. P. 388. It is clear that the word site, if used in any bye-law made under this Act, would not have the limited meaning it possesses in the Act above referred to.

An ambulance station structurally disconnected with any building, and from which the public were rigorously excluded, was held not to be a *public* building within the meaning of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3. This decision may be useful in construing bye-laws referring to or excepting from their operation *public buildings*. *Joslyne v. Meeson*, 53 L. T. (N.S.) 319; 49 J. P. 805.

(e) As to the person liable to penalties for breach of bye-laws as to buildings, see *Brown v. Edmonton Local Board*, *post*, p. 219.

The appellant, without giving any notice or delivering any plans, erected certain structures which from their description could not be intended for residential purposes, and which were found by the justices, on a case stated, to have been erected for a temporary purpose only (the storing of tools, &c., during the erection of other buildings), and to have been intended to be pulled down by the appellant when that purpose was answered:—Held, that the bye-laws as to new buildings did not apply to such a structure, but that if they did they were unreasonable and bad. *Fielding v. Rhyl Improvement Commissioners*, 3 C. P. D. 272; 38 L. T. (N.S.) 223; 26 W. R. 881; 42 J. P. 311.

B., being owner of waste ground in an urban district, put a wooden fence along the boundary without floor or roof. He let the place to R., who sold toys during the sea-side season, but forbade R. to affix anything to the structure. R., without B.'s knowledge, stretched canvas across the top of the fence while selling toys, and left the premises in September, 1889. Three days later B. was charged with erecting a wooden building contrary to the bye-laws:—Held, the justices were wrong in convicting B., the mere fact of being owner showing no offence. *Bennett v. Skegness Local Board*, 54 J. P. 469.

An advertising company, the occupiers of a plot of land within the borough of S., which plot was already enclosed by a wooden hoarding, raised these boarded walls or hoardings to a height of from 13 to 19 feet, and put inside upright timbers, and connected the boarding on the sides of the ground by cross pieces which acted as ties. The land within was used for preparing wood for hoardings to be used elsewhere. It was held on appeal from conviction under a bye-law that the structure was not a new building; that the bye-laws pointed to a building with a roof and capable of affording protection or shelter, and that the word "building" in the bye-law meant some structure containing some feature contemplated by and dealt with in the bye-laws. *Slaughter v. Sunderland (Mayor, &c., of)*, 60 L. J. M. C. 91; 65 L. T. (N.S.) 250; 55 J. P. 519; 7 T. L. R. 296.

B. was summoned for building over an open space in his brewery without giving notice, and without approval of the local board, contrary to a bye-law. The building was a boiler substituted for a smaller one, and partly sunk in the ground with a casing of 9-inch brickwork, 4 feet high, leaving the top of the boiler uncovered. It was held that this was not a new building within the meaning of the statute and bye-law. *Gery v. Black Lion Brewery Company*, 55 J. P. 711.

By section 111 of the Hastings Improvement Act, 1885, "the making of any

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addition to an existing building by raising any part thereof . . . shall for all the purposes of this Act and of any other local Act for the time being in force within the borough, and of the Public Health Acts, and of any bye-law made thereunder respectively, be deemed to be the erection of a 'new building,' and the word building shall, for all such purposes, include an erection or building of a permanent character of whatever material constructed." By a bye-law under this section, "Every person who shall intend to erect a building or otherwise to execute any work to which any of the bye-laws relating to new buildings may apply, shall before beginning to erect such building or to execute such work, deliver or send, or cause to be delivered or sent, to the surveyor of the sanitary authority notice in writing in which shall be specified the date on which such person will begin to erect such building or to execute such work;" and by bye-law 87 a penalty is imposed for offences against the bye-laws. The respondent, a builder, had built a house with a conservatory on the first floor, in accordance with plans duly passed by the sanitary authority. Subsequently the respondent pulled down the conservatory, and in its place built a bedroom, a portion of one of the external walls of the house being raised for that purpose; the bedroom was of the same height as, and occupied no greater space than, the conservatory for which it was substituted. No notice under bye-law 81 was sent by the respondent to the surveyor before the erection of the bedroom. Upon a summons charging the respondent with not giving such notice before beginning to erect a building to which the bye-laws relating to new buildings applied, the justices held, that as the bedroom when erected did not occupy any greater space than was previously occupied by the conservatory, the respondent had not by the erection of the bedroom made an addition to an existing building within the meaning of section 111 of the Hastings Improvement Act, 1885. It was held that the justices were wrong, and that the mere fact that the bedroom occupied no greater space than the erection for which it was substituted did not necessarily prevent its being an addition to an existing building within the meaning of the section. *Meadows v. Taylor*, 24 Q. B. D. 717; 59 L. J. M. C. 99; 62 L. T. (N.S.) 658; 54 J. P. 757. But a conservatory, 15 feet long and 9 feet deep, made of wood and glass, and built against the side of a house, was held not to be within the usual bye-law relating to the construction of walls of new buildings. *Hibbert v. Acton Local Board*, 5 T. L. R. 274. See, however, *Leicester (Corporation of) v. Brown*, 62 L. J. M. C. 22; 67 L. T. (N.S.) 686; 41 W. R. 78; 57 J. P. 70; 9 T. L. R. 8; 5 R. 35, decided as to what is a building under section 3 of the Public Health (Buildings in Streets) Act, 1888, *post*.

A steam roundabout, shooting gallery, and caravans were held not to be "wooden structures or erections of a movable or temporary character" within the meaning of 45 Vict. c. 14, s. 13. *Hall v. Smallpiece*, 59 L. J. M. C. 97; 54 J. P. 710. In another case a builder's office constructed of wood and roofed with zinc, placed upon iron wheels to enable it to be wheeled about to any place where building operations were being carried on, and kept, when not required at any such place, in the builder's own yard, and used as a pay office for his men, was held not to be within the same words. *London County Council v. Pearce* [1892], 2 Q. B. 109; 66 L. T. (N.S.) 685; 40 W. R. 543; 56 J. P. 790; 8 T. L. R. 531. So also of a bungalow constructed of wood and corrugated iron and erected on a piece of land for purpose of exhibition and sale but not for occupation in the place where it was so erected. *London County Council v. Humphreys* [1894], 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. (N.S.) 201; 43 W. R. 13; 58 J. P. 734; 10 T. L. R. 594; 10 R. 533. See also on the construction of the same Act, *London County Council v. Chandler*, 60 L. J. M. C. 114; 55 J. P. 679.

By the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 27, rule 4, every warehouse or other building used for the purposes of trade or manufacture containing more than 216,000 cubic feet, shall be divided by party walls. By section 8, rule 2, no buildings shall be united, if when so united they will be in contravention of the Act. Within the limits of the Act the respondent added to a building previously erected a new building, without separating them by party walls; the addition was made by taking down one of the external walls of the old building, and then erecting the new building against the old one. The addition contained less than 216,000 cubic feet, but the two buildings taken together contained more than that quantity. It was held that the buildings had been united in contravention of the statute, and must be separated by a party wall. *Scott v. Legg*, 2 Ex. D. 39; 46 L. J. M. C. 117; 35 L. T. (N.S.) 487. But this decision was reversed in the Court of Appeal, on the ground that the old building was not subject to the Act, and the new one only to the extent of the addition. 10 Q. B. D. 236; 46 L. J. M. C. 267; 36 L. T. (N.S.) 456; 25 W. R. 594; 41 J. P. 773.

Therefore it would appear that bye-laws would by virtue of this proviso have the

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With regard to the prevention of fire it may be noted that the words "incombustible materials" as used in section 19 of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), have been held to mean wholly incombustible materials and not to include duroline. *Payne v. Wright* [1892], 1 Q. B. 104; 61 L. J. M. C. 7; 65 L. T. (N.S.) 612; 40 W. R. 191; 56 J. P. 120; 8 T. L. R. 54.

The L. Improvement Act enacted that no one should, without the previous consent of the local board, erect dwelling-houses in blocks of eight houses back to back, and that an open space should be left at the end of each block, on the land of the owner, not less than 15 feet wide, or that such houses should have at their front or back a space of 154 square feet. R. added two back-to-back houses to other eight which had been built before the passing of the Act by another owner of the adjacent piece of land:—Held, that R. had erected a block of houses within the meaning of the enactment, and that it was immaterial whether the houses were all built by the same owner or some were built before the Act:—Held, also, that the enactment as to open spaces was additional to and not in substitution for the first part of the section. *Robshaw v. Leeds (Mayor of)*, 39 J. P. 149.

With regard to the meaning of the term party-wall when used in bye-laws, see the judgment of FRY, J., in *Watson v. Gray*, 14 Ch. D. 192; 49 L. J. Ch. 243; 42 L. T. (N.S.) 294; 28 W. R. 438; 44 J. P. 537; and the definition given in the London Building Act, 1894 (57 & 58 Vict. c. cxxiii.).

With reference to the meaning of the expression "topmost storey" when used in bye-laws, see *Foot v. Hodgson*, 25 Q. B. D. 160; 59 L. J. Q. B. 343. There it was held that a topmost storey need not necessarily be contained within four vertical walls, and that floors or rooms enclosed on three sides by vertical walls and in front by the sloping roof of the house were *storeys*. And see the definition in the London Building Act, 1894 (57 & 58 Vict. c. cxxiii.).

(f) As to the ventilation of buildings, see the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 110—115. These sections are not, however, incorporated with this Act, and are, therefore, applicable only when there is a local Act in force.

A bye-law was made by a town council as a local board, that wherever any open space had been left belonging to any building, it should never afterwards be built upon without consent of the council, and without having an open space of a specified size and dimensions. It was held that if it applied to old buildings it was invalid. *Tucker v. Rees*, 7 Jur. (N.S.) 629; 25 J. P. 789.

A local board made a bye-law that every building to be erected, and used as a dwelling-house, should have an open space exclusively belonging thereto to the extent at least of 500 square feet, free from any erection thereon above the level of the ground:—Held, that this was a valid bye-law, and that justices might find as a fact that a small wooden fence, 3 feet 6 inches high, erected round the house, was an erection within the meaning of the bye-law. *Adams v. Bromley Local Board*, 37 J. P. 662.

A local improvement Act authorised bye-laws to be made for sufficiency of space about buildings. One of such bye-laws provided that every new building should have in the rear or side thereof an open space of at least 150 square feet, and that wherever any open space had been left when the building was approved such space should not afterwards be built upon without approval:—Held, that the bye-law was invalid so far as it prohibited future buildings in the space on the rear. *Quinby v. Liverpool (Mayor &c., of)*, 53 J. P. 213. The ground of this decision appears to have been that under the bye-law as it stood the open space could never have been built upon whatever its extent might be.

A bye-law provided that every building to be erected, and used as a dwelling-house, should during such use have in the rear or at the side thereof, an open space exclusively belonging thereto to the extent of at least 150 square feet, free from any erection above the level of the ground other than a privy; but that where there was a water-closet and no other privy, an open space of not less than 100 feet might be allowed, and that the distance across such open space between every such building and the opposite property at the rear or side, exclusive of any common passage, should be 10 feet at least; if such building were two storeys in height above the level of such open space, the distance across should be 15 feet; if three storeys, 20 feet; if more than three storeys, 25 feet:—Held, that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demar-

cation between such building and the opposite property, and that at no point should a less distance than that prescribed by the bye-law intervene between them, exclusive of any common passage. *Anderton v. Rigby*, 13 C. B. (N.S.) 603; S. C., *Anderton v. Birkenhead Improvement Commissioners*, 9 Jur. (N.S.) 1058; 32 L. J. M. C. 137.

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The respondent was convicted of unlawfully permitting to be used as a dwelling-house a certain building, contrary to the West Hartlepool Improvement Act (33 & 34 Vict. c. cxiii). In 1867, one L., wishing to convert his dwelling-house into a lock-up shop and warehouse applied to the commissioners for permission, which was granted on condition that if again used as a dwelling-house it should be altered so as to leave an open space at the back. The premises were bought by the respondent in 1878, and he knew nothing of the condition. In 1883 it was let for five years, and was latterly used as a restaurant. It was held that the justices were right, as the local Act applied to then existing buildings retrospectively. *West Hartlepool Commissioners v. Levy*, 50 J. P. 196.

The L. improvement commissioners made a bye-law that every person erecting a new building to be used as a dwelling-house should provide in the rear thereof an open space exclusively belonging thereto, to the extent of at least 150 square feet, free from any erection thereon above the level of the ground, and should cause the distance across such open space between every such building and the opposite property at the rear to be 10 feet at least, and if such building be 25 feet in height, should cause such distance across to be at least 20 feet. An information being preferred against P. for a breach of the bye-law, it was proved that he had erected within the jurisdiction of the commissioners a new building to be used as a dwelling-house, 25 feet in height; that there was in the rear of the building an open space exclusively belonging thereto to the extent of 700 square feet; that the distance across such open space between such building and the boundary of the opposite property at the rear thereof, including the width of the street which divided the building from the opposite property, was 52 feet; and that the land exclusively belonging to such building was bounded in the rear by a public street, and that the distance across the open space between the building and the public street was 8 feet:—Held, on case stated, that on the true construction of the bye-law, the public street was the “opposite property,” and that as P. had not caused the distance across the open space between his building and the opposite property to be at least 20 feet, he had committed a breach of the bye-law. *Jones v. Parry*, 57 L. T. 492; 52 J. P. 69.

A bye-law provided that 15 square feet air space should be left open in the rear of a new building. It was held that where a person built in contravention of this bye-law within the 15 feet, the local authority might pull down the offending building so long as they did it so as not to cause unnecessary damage. *Jagger v. Doncaster Rural Sanitary Authority*, 54 J. P. 438.

(g) A toll-house erected under a local Turnpike Act was held to be within the corresponding provisions of 11 & 12 Vict. c. 63, s. 53. *Tunstall Turnpike Trustees v. Towndes*, 20 J. P. 374, being thus included within the term “building.”

A bye-law that no dwelling-house shall be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the house, was held not to be legal. *Waite v. Garston Local Board*, L. R. 3 Q. B. 5; 37 L. J. M. C. 19; 17 L. T. (N.S.) 201; 16 W. R. 78; 32 J. P. 228. Per COCKBURN, C.J.: A proviso at the end of such a bye-law which leaves it in the discretion of the local board to enforce it or not does not render it valid.

B. was charged with erecting new buildings not in accordance with the deposited plans, in that certain tub-closets were not in the position shown on the plans, having been erected from 15 to 27 feet distant from the main building instead of 2½ feet as shown in the plans. It was held that the tub-closets were privies, and that the defendant was rightly convicted on a charge of executing works without previously deposited plans. *Burton v. Acton*, 51 J. P. 566. Where a bye-law required that every person intending to erect a building should send in complete plans and sections of every floor, showing the position, form, and dimensions of every part of the intended building, but there was no bye-law against building contrary to deposited plans, and the respondent sent in plans which were approved, but afterwards, without sending in fresh plans, made substantial alterations by diminishing the height of the floors of the building, it was held that he ought to be convicted of a breach of the bye-law requiring the deposit of plans. *James v. Masters* [1893], 1 Q. B. 355; 67 L. T. (N.S.) 855; 41 W. R. 174; 57 J. P. 167; 5 R. 112.

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An urban sanitary authority made the following bye-law :—"No new house shall be occupied until the house drainage has been made and completed, nor until such house has been certified by the local board, or their officer authorised to give such certificate, after examination, to be in every respect fit for human habitation in their or his opinion?"—Held, on case stated, that the bye-law was reasonable and not inconsistent with any of the provisions of the Act, and, therefore, valid. *Horsell v. Swindon New Town Local Board*, 52 L. T. 732; 52 J. P. 597; W. N. (1888), 97.

(h) See as to this subject, sections 46, 97, *ante*, pp. 73, 121, and the Housing of the Working Classes Act, 1890, *post*.

(i) It was held under 21 & 22 Vict. c. 98, s. 34, that a local board could not make a bye-law that before beginning to dig or lay the foundation of any new building, a written notice of one month at the least should be left with the clerk of one of the monthly meetings of the board, accompanied with the plans and sections. It was also held that if a person gave notice of intention to build, and left plans and sections, he might at once commence the building, subject to the right of the board to alter or pull it down if not in conformity with the bye-laws. *Hattersley v. Burr*, 4 H. & C. 523; 14 L. T. (N.S.) 565. This case and the previous one of *Young v. Edwards*, *post*, p. 217, were discussed in *Hall v. Nixon*, L. R. 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. (N.S.) 87; 23 W. R. 612; 39 J. P. 341. There a bye-law was held to be reasonable and valid which required every person intending to erect a new building, to give 14 days' notice, and to deliver plans and sections to the surveyor of the board, and which provided that any person erecting a new building without delivering such notice and plans, or without having the plans approved by the board, should be liable to a penalty. *Hattersley v. Burr* was distinguished on the ground that, under the bye-law in that case, a builder might be delayed two months. The provision for giving notice is not inconsistent with the power to pull down buildings erected in contravention of the bye-laws under a bye-law or under the next section, for the beginning to build without notice may subject the builder to a penalty, while the buildings erected in contravention of the bye-laws may be pulled down. Per QUAIN, J., in *Hall v. Nixon*, and see the next section. It should be observed here that penalties for building in contravention of a bye-law without the approval of the local authority cannot be recovered unless the local authority have exercised their power of disapproval within the month prescribed by the next section. *Clarke v. Bloomfield*, 1 T. L. R. 323. With reference to the time within which proceedings under the bye-laws must be taken, see the cases cited in the notes to the next section as to continuing offences.

Section 99 of a local Act provided that every house to be thereafter erected on vacant land, except corner houses, should have a back yard or other vacant ground or area of not less length than eight feet extending from the main building for the whole length of such building; and section 101 required a plan to be furnished to the local board by persons intending to build, showing the particulars required by the Act. A builder submitted a plan of four new houses having vacant ground at the side but not at the back. The board disapproved the plan as not complying with section 99, but the party commenced to build notwithstanding. It was held that whether section 99 required the vacant space to be at the back or not, the party was rightly convicted of an offence against section 101. *Pearson v. Kingston-upon-Hull Local Board*, 3 H. & C. 921; 35 L. J. M. C. 36; 13 L. T. (N.S.) 180; 29 J. P. 711.

A bye-law providing that every person who should intend to erect a building or to rebuild any existing house should give notice in writing of his intention to the sanitary authority and should accompany such notice with a plan, was held reasonable and valid. *Ballymena (Commissioners of) v. McKay*, Ir. Rep. 17 Ch. D. 605.

(k) A bye-law requiring plans of new buildings and showing the position of such buildings and of adjoining buildings, was held to be legal in *Slee v. Bradford (Mayor of)*, *ante*, p. 203. Bye-laws made under this section may require plans of a similar kind. It has been held that it is reasonable to make bye-laws enabling the urban authority to retain the plans of intended buildings, although such plans be disapproved of and rejected. *Gooding v. Ealing Local Board*, 1 C. & E. 359; 1 T. L. R. 62.

(l) See the next section and the provisions as to expenses contained therein.

(m) This power is not confined to bye-laws relating to structure, but may be extended to and incorporated in bye-laws as to the giving of notices and the deposit

of plans. *Baker v. Portsmouth (Mayor of)*, 3 Ex. D. 157; 47 L. J. Ex. 223; 37 L. T. (N.S.) 822; 26 W. R. 303; 42 J. P. 278, affirming 3 Ex. D. 4; 37 L. T. (N.S.) 381; 25 W. R. 677. Note to Section 157.

(n) These words remove the ambiguity which gave rise to *Brown v. Holyhead Local Board*, 1 H. & C. 601; 32 L. J. Ex. 25; 7 L. T. (N.S.) 332; 11 W. R. 71; 27 J. P. 184; and *Young v. Edwards*, 33 L. J. M. C. 227; 11 L. T. (N.S.) 424; *Burgess v. Peacock*, 16 C. B. (N.S.) 624; 10 L. T. (N.S.) 617; 10 Jur. (N.S.) 803.

A bye-law made by an urban authority provided that every new street should be laid out and formed of such width and at such level as the urban authority should in each case determine:—Held, reversing the decision of the Court of Appeal, that width in the text and in the bye-law meant width of roadway, and not width between houses on each side of the street; and that the urban authority were not entitled under the above bye-law, or any other of their existing bye-laws, to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway. *Robinson v. Barton Local Board*, 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 276.

(o) This is a new provision.

Railway arches enclosed and let for being used as a stable, were held to be still buildings belonging to a railway company so as to be exempt from the provisions of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 49. *Re Badger*, 8 E. & B. 728; 30 L. T. (O.S.) 285; S. C., *sub-nom. North Kent Railway Company v. Badger*, 27 L. J. M. C. 106; 22 J. P. 160. See *Coole v. Lovegrove* [1893], 2 Q. B. 44; 62 L. J. M. C. 153; 69 L. T. (N.S.) 19; 41 W. R. 570; 57 J. P. 647.

See also the *London and Blackwall Railway Company v. Limehouse Board of Works*, 3 K. & J. 123; 26 L. J. Ch. 164; 28 L. T. (O.S.) 140; 20 J. P. 789.

But this proviso does not enable a railway company to build cottages for their servants without complying with the bye-laws, for such buildings are not "used for the purposes of" the railway within the meaning of the proviso. *Manchester, Sheffield, and Lincolnshire Railway Company v. Barnsley Union (Guardians of)*, 56 J. P. 149; 67 L. T. (N.S.) 119.

158. Where a notice, plan, or description of any work is required by any bye-law made by an urban authority (a) to be laid before that authority, the urban authority shall, within one month (b) after the same has been delivered or sent to their surveyor or clerk, signify in writing (c) their approval or disapproval (d) of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed. (e) As to commencement of works and removal of works made contrary to bye-laws.

Where an urban authority incur expenses in or about the removal of any work executed contrary to any bye-law, such authority may recover in a summary manner (f) the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion. (g)

Where an urban authority may, under this section, pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, (h) but a penalty shall not be incurred in respect

Section 158. thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken.

(a) These words are general, and do not restrict the urban authority to bye-laws made under this Act. It appears to apply equally to bye-laws made by any previously existing authority. See section 326, *post*.

(b) This means a calendar month. 52 & 53 Vict. c. 63, s. 3. The time cannot be extended by the bye-laws. *Clarke v. Bloomfield*, "Times," 5th March, 1885; 1 T. L. R. 323.

(c) As to the authentication of this notice of approval or disapproval, see section 266, *post*.

(d) The disapproval will be of no avail if the builder can show that he has not disobeyed any bye-law, but it will, of course, be perilous to proceed until approval.

The authority must either approve or disapprove. They cannot inquire into the right or title of a person to build on the land to which his plans relate. See *Ex parte Crosby*, 41 J. P. 740.

Where plans for a new street were submitted to a corporation, and the plans complied in all respects with the provisions of the local Act in force in the borough, it was held that the corporation could not refuse to pass the plans because they did not approve of the site. *Reg. v. Preston (Corporation of)*, 3 T. L. R. 665. In another case where the plans did not disclose any breach of the bye-laws and the urban authority disapproved of the intended building on the ground that a house of the nature and character proposed would be unsuitable to the locality and would tend to depreciate the character of the adjoining property, the court issued a *mandamus* to the urban authority to approve the plans. *Reg. v. Newcastle-upon-Tyne (Mayor, &c., of)*, 60 L. T. (N.S.) 963; 53 J. P. 788; 5 T. L. R. 467. In *Reg. v. Harrogate*, Q. B. D. 16th April, 1890, the court refused a writ of *mandamus* under similar circumstances holding (on the authority of *Reg. v. Lambourne Valley Railway Company*, 22 Q. B. D. 463; 58 L. J. Q. B. 136; 60 L. T. (N.S.) 54; 53 J. P. 248; 5 T. L. R. 78), that the proper remedy was by action for a *mandamus*. But it may be doubted whether the decision would now be followed (see *Reg. v. St. George, Southwark (Vestry of)*, 51 L. J. Q. B. 398). If not, a builder whose plans are disapproved may do one of two things, assuming, of course, that his plans comply with the bye-laws; he may go on with his building or he may apply for a *mandamus* to approve. In *Reg. v. Llandudno Improvement Commissioners*, "Times," 28th January, 1892, upon cause shown against a rule *nisi* for a *mandamus* to the defendants to approve plans of a new theatre to be built by the applicants, the Llandudno Pier Company, the court (LAWRANCE and WRIGHT, JJ.) overruled a preliminary objection that the proper remedy was by action of *mandamus*, though the rule was discharged on another ground.

When the local authority have assented to the erection of a building on condition of its being removed within a given time, it would seem that they have no power to enforce the fulfilment of such a condition unless they have taken a bond with sureties conditioned for such removal. See *Parsons v. Timewell*, 44 J. P. 296. This case was decided with reference to the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 45, 46.

When a local board has not within the month prescribed by this section signified its disapproval of the plans laid before it, it cannot afterwards object to the building according to the plan. *Masters v. Pontypool Local Board*, *ante*, p. 204. And see *Slee v. Bradford (Mayor of)*, *ante*, p. 203; *Clarke v. Bloomfield*, 1 T. L. R. 323.

(e) There may be a provision to this effect in the bye-laws. See section 157, note (m), *ante*, p. 216. But, notwithstanding the power given by this section, the authority may impose a penalty for breach of any of the bye-laws. See *Hall v. Nixon*, *ante*, p. 216.

It is to be observed that notice must be given to the person erecting the building, and an opportunity given to him to be heard before the authority can legally demolish the same. *Cooper v. Wandsworth District Board of Works*, 14 C. B. (N.S.) 180; 9 Jur. 1155; 32 L. J. C. P. 185; 8 L. T. (N.S.) 278; 11 W. R. 646; and see *Masters v. Pontypool Local Board*, *ante*, p. 203. These cases were followed and approved in *Hopkins v. Smethwick Local Board*, 24 Q. B. D. 712; 59 L. J. Q. B. 250; 62 L. T. (N.S.) 783; 38 W. R. 499; 54 J. P. 693; 6 T. L. R. 286. And see *Attorney-General v. Hooper* [1893], 3 Ch. 483; 63 L. J. Ch. 18; 69 L. T. (N.S.) 340; 57 J. P. 564; 8 R. 535. But see *Cheetham v. Manchester (Mayor of)*, L. R. 10 C. P. 249; 44

L. J. C. P. 139 ; 32 L. T. (N.S.) 28 ; 39 J. P. 343, where, in the case of a dangerous house, notice was not required under the provisions of a local Act, the certificate of the surveyor being conclusive as to the fact of the danger. Note to Section 158.

When the local authority are entitled to pull down a building under the bye-laws or this section they may do so in any way they please so long as it is not dangerous ; so that where there had been excess in pulling down a building they were held not liable, the damage done not being appreciable. *Jagger v. Doncaster Rural Sanitary Authority*, 54 J. P. 438.

See *Robinson v. Barton Local Board*, in the note to the last section.

(f) See section 251, *post*. This provision was contained in many bye-laws, but it does not appear that such a bye-law was legal. Hence the provisions in the text.

As to the time within which these expenses may be recovered, see the note to section 252, *post*.

On a *certiorari* to quash an order of justices for payment of expenses under this section, costs may be granted as the proceedings are civil, not criminal. *Reg. v. Morris*, 31 W. R. 609.

(g) B. contracted with W., the owner of land, to erect 76 houses thereon for a certain price and on certain terms, and lodged plans with the urban authority. After erecting 59 houses, B. agreed, on September 1st, with C., that C. should erect the rest of the houses at a certain price, and C., in erecting the houses, made the walls insufficient, and not in compliance with the bye-laws. C.'s violation of the bye-laws was after September 1st, when B. had ceased to have anything to do with the buildings ;—Held, that B. was not "the person erecting the buildings" which C. was building, and was not liable under the bye-laws, which imposed a penalty for violation of rules as to thickness of walls. *Brown v. Edmonton Local Board*, 45 J. P. 553. But *quære* whether under such circumstances, if a building were pulled down by virtue of this section, the expenses might not have been recovered from B. as the person causing the works to be executed.

B., being the owner of waste ground in an urban district, put a wooden fence along the boundary without floor or roof. He let the place to R. who sold toys during the seaside season, but forbade R. to fix anything to the structure. R. without B.'s knowledge stretched canvas across the top of the fence while selling toys, and left the premises. Three days later B. was charged with erecting a wooden building contrary to the bye-laws. It was held that the justices were wrong in convicting B., the fact that he was owner not making him guilty of the offence. *Bennett v. Skegness Local Board*, 54 J. P. 469.

(h) These words provide a means of meeting the decision in *Marshall v. Smith*, L. R. 8 C. P. 416 ; 42 L. J. M. C. 108 ; 28 L. T. (N.S.) 538 ; 37 J. P. 471.

In that case bye-laws were made by the local board of Sunderland under the Public Health Act, 1848, s. 115, and the Local Government Act, 1858, s. 34, by one of which (No 12) all party walls, except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which (No. 42) it was provided that "in case any offence under any of the foregoing bye-laws shall continue, the person offending shall be liable to a further penalty of not exceeding 40s. for each day during which such offence may continue after written notice of the offence has been given by the local board to the offender." The appellant having been convicted and fined for an offence against bye-law No. 12, in building a party wall of 4½ inches in thickness instead of 9, was afterwards convicted upon an information charging him, under bye-law 42, with continuing the offence, and again fined. It was held that suffering the party wall to remain unaltered was not a continuing offence within bye-law 42, or, if it was, that the bye-law was unreasonable, the appropriate remedy being the removal of the structure by the board, as authorised by section 34 of the Local Government Act, 1858. The court pointed out that while continuing to build might be a continuing offence, the failure to destroy after the building was completed could not.

Bye-laws were made for the borough of S. under the powers given by section 34 of the Local Government Act, 1858. This Act was repealed by the Public Health Act, 1875, but by section 326 of the latter (*post*) all bye-laws duly made under any of the Sanitary Acts thereby repealed, and not inconsistent with any of the provisions of the Act, were to be deemed bye-laws under that Act. The 27th bye-law provided that every person who intended to erect any new building should give one month's notice of such intention, and send in a plan of the works to the surveyor. The 31st bye-law provided that if the owner or person intending to construct any

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new building fail to give the required notices, or construct, or cause to be constructed, any building contrary to the provisions of any of the said bye-laws, he shall be liable for each offence to a penalty not exceeding 5*l.*, and he shall pay a further sum, not exceeding 40*s.*, for each day such buildings shall continue or remain contrary to the said provision. The appellant contended that he was not bound to give notice or send a plan of alterations he proposed to make in his house, as the alterations merely consisted in raising the old walls a storey higher, but he sent a plan, as he said, as a matter of courtesy. This plan was disapproved of, and notice of such disapproval was sent to the appellant, but he went on with the buildings. He was then summoned by the respondent, who was the surveyor of the urban authority, for neglecting to give notice and send plans according to the bye-laws. The magistrate found that the structure was in fact a comfortable, good looking-dwelling-house, which before it was not. He also found, as a fact, that the old building was partly pulled down to the ground floor, and that the buildings erected on the site thereof formed a new building intended for occupation, and that they were a new building within section 159, *post*. The appellant was convicted and fined 40*s.* and costs, and a further sum of 20*s.* for each day the work should continue or remain contrary to the provisions of the said bye-laws. It was held, affirming the conviction, that the question whether the alterations constituted a new building was a question of fact for the magistrate to decide, and that he had decided as a fact that they did constitute a new building, and that the penalty of 5*l.* was payable in addition to the penalty of 40*s.* a day, though the information laid against the appellant was only for not having given the notice and plans under the 27th bye-law. *James v. Wyvill*, 51 L. T. (N.S.) 237; 48 J. P. 725.

A builder who, between March and October in one year, had commenced and completed buildings without obtaining such approval of the plans from the local authority as was properly required by bye-laws framed under the Act of 1848 and 1858, received in October notice to pull down such buildings, and upon his non-compliance was, in December, summoned, and upon conviction fined 5*l.*, and, in addition, 5*s.* for every day from the date of the above notice down to the day of the summons, under the following bye-law:—"That if any person shall build, without the approval of the local board, or do anything contrary to the provisions of the bye-laws, he shall be liable for such offence to a penalty not exceeding 5*l.*, and shall pay a further sum, not exceeding 40*s.*, for every day during which such works shall continue to remain contrary to these provisions, and the board may cause the work to be pulled down." It was held that the bye-law was bad, in so far as it imposed a penalty of 40*s.* a day for the mere continuance in existence of a building already completed; and (per HAWKINS, J.), inasmuch as it imposed a penalty of 40*s.*, "for every day that the work shall continue," instead of "for every day that the offence shall continue," as authorised by section 115 of the Act of 1848 and confirmed by section 326, *post*; and that the offence could only date from the notice given by the board to discontinue the work. It was held, further, that inasmuch as the original offence was the "commencing to build without the plans being approved," and the continuing offence was "the continuing to build buildings without such approval being obtained," the proceedings had not been commenced within six months of the original offence, and that they were therefore out of time under 11 & 12 Vict. c. 43, s. 11, and that the provision in the text (section 158) did not extend that limitation. And, per HAWKINS, J., that the bye-law was good, in so far that as it treated that as a continuing offence which was so made good by section 158, and that a bye-law in part good and in part bad was severable. *Reay v. Gateshead (Mayor, &c., of)*, 55 L. T. (N.S.) 92; 34 W. R. 682; 50 J. P. 805.

HAWKINS, J., said: "This section 158 really seems to have been pointed to the making that a continuing offence by law which the two learned judges who decided *Marshall v. Smith* held not to be a continuing offence. It reversed their judgment as to the existing state of the law, so that if this section had been passed before the decision in *Marshall v. Smith*, there would have been no doubt at all that the penalties there would have been properly imposed. At all events, since 1875 the offence is a continuing offence, and the continuing penalties may now be inflicted. But there is another short sentence in this section, which rather refers to the Statute of Limitations: 'But a penalty, &c., . . . broken.' The limitation of time within which the penalty is to be sued for does not seem to me to affect the procedure at all. It simply provides that in the case of a continuing offence, no penalty shall be incurred for a greater period than twelve calendar months; but it does not

limit the time of proceeding to twelve calendar months, or extend the six months given by Jervis's Act under section 11. It merely provides a limitation to the extent of the amount of the penalty which may be incurred." Note to
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It appears from the above judgment that it may, in many cases, be important to decide whether the period of the six months' limitation is to be reckoned from the commencement of a work or from its completion, and that in cases under bye-laws made before 1875 the continued existence of a work done in contravention of the bye-laws is not, in general, a continuing offence. It may be useful to append here some of the more recent cases as to what amounts to a continuing offence. Where, under a local Act, it was provided that if buildings should be erected contrary to the requirements of the corporation, the corporation might make complaint thereof to a justice, who was thereupon empowered to make an order directing the demolition of the building, it was held that, pursuant to 11 & 12 Vict. c. 43, s. 11, the complaint must be made within six months after the completion of the building erected contrary to the provisions of the local Act. *Morant v. Taylor*, 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. (N.S.) 139; 24 W. R. 461; 40 J. P. 501. Under 27 & 28 Vict. c. 101, s. 51, which enacts that if any person shall encroach by making, or causing to be made, any building or fence on the side of any carriage-way within 15 feet from the centre thereof, he shall be subject to a penalty not exceeding 40s.; the encroachment is not a continuing offence, and the six months' limitation commences from the completion of such building offence. *Coggins v. Bennett*, 2 C. P. D. 568. By 9 Geo. 4, c. 77, s. 18, no person may be convicted of an offence against 3 Geo. 4, c. 126, s. 118 (which enacts that any person causing an encroachment within a certain distance of the centre of a highway road shall be subject to a penalty) after the expiration of six months from the time when such offence shall have been committed. It was held that the period of six months began to run from the time that a substantial encroachment on the highway had been caused, and not from the final completion of the encroaching building or other encroachment. *Hyde v. Entwistle*, 52 L. T. (N.S.) 760; 48 J. P. 820. *Rumball v. Schmidt*, 8 Q. B. D. 603; 46 L. T. (N.S.) 661; 30 W. R. 949; 46 J. P. 567, was decided with reference to section 156, now repealed, and is cited in the notes to the substituted enactment, 51 & 52 Vict. c. 52, *post*. Where a temporary structure was erected within the metropolitan district without the license of the Metropolitan Board of Works, but no complaint of such erection was made until after the expiration of six months from its completion, it was held that the offence was a continuous one, and that proceedings for the recovery of penalties might be taken within six months of the time when it continued to exist. *Metropolitan Board of Works v. Anthony*, 54 L. J. M. C. 39; 33 W. R. 166; 49 J. P. 229. It is to be observed that this case was decided upon the 45 Vict. c. 14, s. 13, which not only imposes a penalty for the offence but also imposes a penalty "for every day on which such structure, &c., continues erected." L. was summoned by the Metropolitan Board of Works for laying out a new street of less than the width required by 24 & 25 Vict. c. 102, s. 98. L. gave notice of his intended building in May, 1883, to the district surveyor, and paid his fees, but the surveyor did not give notice to the board till November, 1883. The complaint was made in March, 1884. It was held that the notice to the district surveyor was the date of the discovery by the board; and that the complaint was too late, being more than six months after such discovery. *Metropolitan Board of Works v. Lathey*, 49 J. P. 245. One J. had begun to build expensive stables in B. without first giving notice to the corporation. The building was begun in December, 1883. An information was laid against J. in May, 1884, but no summons was issued until the 3rd September, when objection was taken that the summons was out of time. The justices overruled the objection and convicted, but refused to state a case. It was held that the justices were bound to state a case, there being nothing frivolous in the point raised. *Reg. v. Priestly*, 49 J. P. 148. G., the builder of a new house in the metropolis, on the 1st April, sent notice to B., the district surveyor, with plans. On the 4th August, B. served forty-eight hours' notice on G. to amend the work and leave sufficient air space pursuant to 45 Vict. c. 14, s. 14. The house was then covered in and nothing was done under the notice. On the 1st February following, information was laid by B. It was held that the offence was the refusal to do the work ordered on the 4th August, and the information was within the six months' limitation. *Bovill v. Gibbs*, 51 J. P. 485.

Section 159.

What to be
deemed a new
building.

159. For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

This clause does not exhaust the definition of a new building. It only describes what shall be considered to be a new building in particular cases. It is also to be observed that though it provides for the conversion of a house (see the definition in section 4, *ante*, p. 15) into a dwelling-house, it makes no provision for the conversion of a dwelling-house into a house for other purposes, such as a factory or hall for concerts and such entertainments. Such a conversion would not, apparently, amount to the erection of a new building, within the meaning of the bye-laws; and, if not, there seems to be no means of controlling or preventing it, though the premises may be altogether unfit for the purposes to which they are devoted. See, however, *West Hartlepool Commissioners v. Levy*, *ante*, p. 215.

The Public Health Acts Amendment Act, 1890, provides that every local authority may make bye-laws to prevent buildings which have been erected in accordance with bye-laws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the bye-laws (section 24, subsection (4)). The same Act provides as follows in section 33:—

(1.) Where the plan of a building has been, either before or after the adoption of this part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or bye-law, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(2.) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or bye-law for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house.

These sections apply only where the Act of 1890 has been adopted, but where they do apply they meet some of the cases for which the text does not provide. See the *Act*, *post*, and the notes to the sections above referred to.

The Act contains no definition of a dwelling-house. Reference may be made to the cases decided upon the terms as used in the Parliamentary Registration Acts. See, for example, *Lawson v. Fraser*, *ante*, p. 16; *Thompson v. Ward*, L. R. 6 C. P. 327; 40 L. J. C. P. 169; 24 L. T. (N.S.) 679; *Boon v. Howard*, L. R. 9 C. P. 277; 43 L. J. C. P. 115; 29 L. T. (N.S.) 382; 22 W. R. 535.

A stable in a yard at the rear of the respondent's premises was pulled down and re-erected of smaller superficial dimensions, but somewhat higher, in another part of the same yard, the old materials, with some addition, and the boundary walls of the yard, being made use of in such re-erection. It was held that this was a new building within the corresponding provisions of 21 & 22 Vict. c. 98, s. 34. *Hobbs v. Dance*, L. R. 9 C. P. 30; 43 L. J. M. C. 21; 29 L. T. (N.S.) 687; 22 W. R. 90; 38 J. P. 56. In another case the proprietor of a house erected before the constitution of the local board, which house had a coach-house and stable attached to it, pulled down the coach-house and stable, and erected a building partly thereon and partly on an adjoining piece of land opening into an old back street, the access to the old building being by a covered way; and it was held not to be a new building within the meaning of the Act, but only an addition to an old building. *Shiel v. Sunderland (Mayor of)*, 6 H. & N. 796; 30 L. J. M. C. 215; 25 J. P. 647. See also *Pearson v. Kingston-on-Hull Local Board*, *ante*, p. 216. "The question whether a building or not has been decided over and over again to be a question of fact; it is a question of degree. For instance,

if a building were nearly all taken away and then rebuilt, it clearly would be a new building; on the other hand, it is quite clear that by a small addition of say a door, the building would not thereby become a new building. Between these two extreme cases there may be thousands of cases, and it would be impossible to give a definition in each particular case as to what is or is not a new building, and it must be left to the discretion of each judge to decide for himself what is a new building." Per COLERIDGE, C.J., in *James v. Wyvill*, ante, p. 220.

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R. was charged under a local Act with unlawfully erecting a new building without notice to the local board. The building was made of wood, 30 feet long and 13 feet wide, and was brought along the street on wheels, and put at the corner of a new street. It had spouts and a down corner; had a supply of gas, and was used as a butcher's shop. It was held that the justices were right in treating this as a new building, and subject to the ordinary requirements as to new buildings. *Richardson v. Brown*, 49 J. P. 661.

160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters; that is to say,

Incorporation
of certain
provisions of
10 & 11 Vict.
c. 84.

- (1.) With respect to naming the streets and numbering the houses; and
- (2.) With respect to improving the line of the streets and removing obstructions; and
- (3.) With respect to ruinous or dangerous buildings; and
- (4.) With respect to precautions during the construction and repair of the sewers, streets, and houses,

shall for the purpose of regulating such matters in urban districts, be incorporated with this Act.(a)

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may at the option of the urban authority be served on owners(b) instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act.(c)

(a) No. (1) includes sections 64, 65; No. (2), sections 66—74; No. (3), sections 75—78; No. (4), sections 79—83. All these sections are set out in the Appendix. As to the effect of such an incorporation of a statute, see the cases cited in note (b) to section 57, ante, p. 84.

With regard to some of these subjects, special provisions will be found in the Act, and it will be important to ascertain whether these provisions in any respect conflict with those in the incorporated Act. Where that may be the case, the present statute should afford the rule to guide, as containing the latest legislation on the particular subject.

(b) See the definition in section 4, ante, p. 6. And as to the authentication and service of notices, see sections 266, 267, post.

(c) See section 213, post. As to the effect of special covenants and agreements between lessor and lessee, see section 226, post, but *quære*, whether that section applies to the text.

Section 161.

Lighting Streets, &c.

Powers of urban authority for lighting their district.
12 & 13 Vict. c. 94, s. 8.

161. Any urban authority may contract (a) with any person (b) for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, (c) and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same. (d)

Where there is not any company or person (b) (other than the urban authority) authorized by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, (e) to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may (f) themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order (g) authorizing a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870, (h) and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

(a) See section 173, *post*, p. 238, as to the regulations regarding the contracts.

(b) See the definition in section 4, *ante*, p. 6.

(c) It must be noticed that this power is limited to the district of the authority. A contract extending to any place outside the district would be *ultra vires*.

By section 6 of the Metropolis Gas Act, 1860, a certain district was assigned to each metropolitan gas company, and it was provided that no other company or person should "supply gas for sale within the said limits." By section 14, the supply of gas to owners or occupiers of premises within or partly within the company's district requiring such supply was made compulsory. A railway company had a station which was partly within the district of the appellant company and partly within the district of the respondent company. The respondents, on being required to do so by the railway company, provided a meter at a point within their own district, from which they supplied gas which was used for lighting the whole station, including the part which was in the appellant's district, to which it was conducted through pipes laid on the premises of the railway company. It was held that this was an infringement of section 6. *Gas Light and Coke Company v. South Metropolitan Gas Company*, 62 L. T. (N.S.) 126; 54 J. P. 373; 5 T. L. R. 731.

The right of an urban authority under this paragraph to provide light by other means than gas—*e.g.*, by electricity—is not affected by the subsequent paragraphs which are only inserted to prevent an urban authority from invading the regulated monopoly of any gas company in its district. It was, therefore, held that they might authorise their contractor to put up posts and wires in streets vested in them, for the purpose of lighting such streets by electricity, and might restrain by injunction the owners of adjoining land who claimed the subsoil of the street from cutting or otherwise interfering with the electric wires and poles. *Fareham Local Board v. Smith*, W. N. [1891], p. 76; 7 T. L. R. 443; 90 L. T. 467.

(d) The Local Government Board declared by an order under section 276 of the Act that the provisions of the first paragraph of section 161 should be in force within certain portions of a rural sanitary district, and invested the rural sanitary authority with all the powers, rights, capacities, &c., of an urban sanitary authority "under

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those provisions" within such portions of the district. The rural authority incurred lighting expenses under this order, and treated them as general expenses under section 229 of the Act. A poor rate having been made to defray the expenses, a railway company was assessed in respect of the full rateable value of the property, which consisted of land occupied and used as a railway:—Held, that upon the true construction of the order the rural authority was invested only with the power of an urban authority to incur lighting expenses under the provisions of the first paragraph of section 161, and not with the rating powers applicable to an urban authority under the Act; that the expenses were rightly treated as general and not as special expenses under section 229; and that the company was not entitled to be rated under section 211 of the Act and in the proportion of one-fourth part only of the rateable value. The decision of the Court of Appeal (23 Q. B. D. 555) affirmed, *Lancashire and Yorkshire Railway Company v. Bolton Union*, 15 App. Cas. 323; 60 L. J. Q. B. 118; 63 L. T. (N.S.) 358; 54 J. P. 532.

Where trustees of a public road were empowered to place lamps along the road, but failed to do so, it was held that they were not liable in an action by a person who had been injured by reason of the road not being lighted. *Harris v. Baker*, 4 M. & S. 27. In a case where an accident happened to a brougham through running against a lamp post at a dangerous point, the court held that the failure to light the lamp was not negligence, there being no statutory obligation to do so. *Miller v. Heywood (Mayor, &c., of)*, 48 J. P. 148.

Harris v. Baker was followed in *Cowley v. Newmarket Local Board*, ante, p. 158. On the other hand, where the defendants, who were both the highway and the lighting authority, had erected a post at the entrance and in the centre of a footpath to prevent cattle straying upon it, and had placed a lamp near the post, which they were in the habit of lighting at night, and the plaintiff, who was passing along the footpath at night, when the lamp was out or not lighted, came against the post and was injured, it was held that the defendants were liable. *Lamley v. East Retford (Mayor, &c., of)*, 55 J. P. 133.

(e) See section 52, ante, p. 79. There is no reference here to personal pecuniary profit.

(f) This is only an enabling power. There is no compulsion upon the urban authority to undertake these works, but they are not to set up gasworks to compete with companies or other bodies under statutory powers.

But though they may not themselves undertake a supply in opposition to a company, they may apparently contract with a person other than the company under the first paragraph of the section.

It would seem that a local authority to whom the undertaking of a company supplying gas under statutory powers has been transferred is in the same position as the company for purposes of this section. See *Wolverhampton (Corporation of) v. Bilston (Commissioners of)* [1891], 1 Ch. 394; 39 W. R. 394; 7 T. L. R. 162, 374.

(g) See section 297, post. It is not absolutely necessary for the urban authority to procure a provisional order to enable them to set up gasworks, but they would have none of the powers which are given by the general statutes for such works unless they procured such an order. Whether, if they acquire the undertaking of a company established under a private Act, they can without such order avail themselves of all the powers of such Act, is open to doubt. See *Richmond Waterworks Company v. Vestry of Richmond*, ante, p. 80.

As to the assessment to income tax of a corporation supplying gas for public and private purposes, see *Dillon v. Haverfordwest (Corporation of)* [1891], 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. (N.S.) 202; 39 W. R. 478; 55 J. P. 392.

(h) 33 & 34 Vict. c. 70, amended by 36 & 37 Vict. c. 89. See also 38 & 39 Vict. c. 86, s. 4, as to breaches of contract by persons employed in supply of gas or water. The first of these Acts incorporates the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), which was amended by 34 & 35 Vict. c. 41. All these Acts are set out in the Appendix.

162. For the purpose of supplying gas within their district or any part thereof either for public or private purposes any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company, (a) in pursuance, in the case of a company

Power for sale of undertaking of gas company in urban authority.

Section 162. registered under the Companies Act, 1862,^(b) of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights, powers, and privileges and all or any of the lands, premises, works, and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

(a) It has been observed that this section is confined to companies. As regards private individuals who may be owners of such works, no provision seems to be requisite. But the section does not in terms apply to public commissioners or trustees holding gasworks.

See note (c) on section 154, *ante*, p. 201, as to obtaining the sanction of the Local Government Board. The provisions which enable the authority to borrow money for the purchase will be found in Part IV., section 233, *post*.

(b) *i.e.*, 25 & 26 Vict. c. 89, s. 51.

Watching
and Lighting
Act (3 & 4
Will. 4, c. 90)
to be
superseded by
this Act.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment^(a) the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded^(b) by this Act, and all lamps, lamp posts, gas pipes, fire engines, hose, and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

(a) This appears to refer to sections 272 and 276, *post*.

(b) This unusual word is introduced from 21 & 22 Vict. c. 98, s. 46. It is not the same as *repealed*, and, therefore, so much of 3 & 4 Will. 4, c. 90, as relates to watching is not, as it seems, affected by the above section, as no provision for watching is included in this Act. The short title of 3 & 4 Will. 4, c. 90, is now the Lighting and Watching Act, 1833. See the Short Titles Act, 1892.

PUBLIC PLEASURE GROUNDS, &c.

Urban autho-
rity may
provide
places of
public
recreation

164. Any urban authority may purchase,^(a) or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds,^(b) and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.^(c)

Any urban authority may make bye-laws for the regulation of any such public walk or pleasure ground, and may by such bye-laws provide for the removal from such public walk or pleasure ground of any person infringing any such bye-law by any officer of the urban authority or constable.^(d)

(a) For the sections of this Act relating to the purchases of land, see sections 175, 176, *post*. It may be mentioned here that a parish council has certain powers to provide and regulate recreation grounds under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 8, *post*.

(b) Where, by an Act of Parliament a corporation was directed to cause a piece of land to be drained and levelled, and kept in a proper condition for the purpose of public recreation, the court restrained the corporation by injunction from permitting a cattle fair to be held in such piece of ground. *Attorney-General v. Southampton (Mayor of)*, 1 Giff. 363; 6 Jur. (N.S.) 36; 29 L. J. Ch. 282; 1 L. T. (N.S.) 155. In another case a municipal corporation purchased a piece of land under the corresponding provisions of 11 & 12 Vict. c. 63, s. 74. In 1875 the corporation determined to appropriate about a quarter of an acre at one extremity of the piece of land as a site for the erection of town buildings and a museum, public library, school of art, and conservatory. It was held by BACON, V.C., that no portion of the land could be appropriated for any of these objects except the museum and conservatory. But it was held, on appeal, that the erection of a free library was allowable, as being conducive to the better enjoyment of the public walks and grounds as such. *Attorney-General v. Sunderland (Corporation of)*, 2 Ch. D. 634; 45 L. J. Ch. 839; 34 L. T. (N.S.) 921; 24 W. R. 991; 40 J. P. 564.

Note to
Section 164.

(c) A gift, devise, or bequest for the providing of a public park, &c., is exempted from the operation of the Mortmain Act by 51 & 52 Vict. c. 42, s. 6. Purchases of land for the purposes of this section are exempt by virtue of section 7, *ante*, p. 26.

In districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), *post*, has been adopted, the provisions of the above section have been amended and extended as follows:—

Section 44 provides:—(1.) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them, or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public, may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

(2.) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make bye-laws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.

And section 45 provides:—The powers of an urban authority under section 164 of the Public Health Act, 1875, to contribute to the support of public walks or pleasure grounds, shall include a power to contribute towards the cost of the laying-out, planting, or improvement of any lands provided by any person which have been permanently set apart as public walks or pleasure grounds, and which, whether in the district of the urban authority or not, are so situated as to be conveniently used by the inhabitants of the district, and shall also include a power to contribute towards the purchase by any person of lands so situate and to be so set apart as aforesaid.

See the sections and the notes thereto, *post*.

The Acts which relate to the providing of public parks and recreation grounds are 10 & 11 Vict. c. 34, s. 135; 22 Vict. c. 27; 23 & 24 Vict. c. 30. 26 & 27 Vict. c. 13 provides for the protection of gardens and ornamental grounds, as to which see also 24 & 25 Vict. c. 96, s. 31.

26 Vict. c. 13, s. 1, provides that when in any city or borough any enclosed garden or ornamental ground has been set apart, otherwise than by the revocable permission of the owner thereof, in any public square, &c., for the use or enjoyment of the inhabitants thereof, and when the trustees or other body appointed for the care of the same have neglected to keep it in proper order, or when such garden or ground has not been vested or placed in the management of trustees, &c., for the care of the same, and from want of such care or any other cause has been neglected, the corporate authorities shall take charge of the same, putting up a notice to that effect in such garden or ground. As to the meaning of the words "otherwise than by the revocable permission of the owner," see *Tulk v. Metropolitan Board of Works*, L. R. 3 Q. B. 94, 682; 37 L. J. Q. B. 272; 16 W. R. 985; 19 L. T. (N.S.) 18; 32 J. P. 548.

Note to Section 164. See also the provisions of the Inclosure Acts as to allotments for recreation or other public purposes, 8 & 9 Vict. c. 118; 39 & 40 Vict. c. 56; 42 & 43 Vict. c. 37; 45 Vict. c. 15, s. 3.

As to the Metropolis, see 18 & 19 Vict. c. 120, s. 114; 19 & 20 Vict. c. 112, ss. 10, 11; 26 & 27 Vict. c. 13; 29 & 30 Vict. c. 122; 32 & 33 Vict. c. 107; 40 & 41 Vict. c. 35; 41 & 42 Vict. c. 37, ss. 8, 9; 42 & 43 Vict. c. 59, ss. 4, 5, 11; 43 & 44 Vict. c. 25, ss. 3, 5, 6; 44 & 45 Vict. c. 34; 45 & 46 Vict. c. 15.

A faculty cannot be granted authorising a churchyard to be appropriated as a public garden. But it was held to be in the discretion of the Consistory Court to authorise by a faculty the construction of footpaths in it for the convenience of the parishioners, the removal of high walls which obstruct the free circulation of air, the planting of it with trees and flowers when it is closed for burials, and the erection of gates in order to give the parishioners access to it, and other minor alterations. *Reg. v. Teriss*, L. R. 4 Q. B. 407. See also the Open Spaces Act, 1887, and the application for faculties under it in the cases of *Mount Street Burial Ground*, 4 T. L. R. 661; *St. George, Queen Square*, *ib.* 703; *Camden Town Burial Ground*, 5 T. L. R. 311; *Re St. George-in-the-East*, 1 P. D. 311; *Re St. John, Hackney*, and *Re St. Mary, Islington*, "Times," 21st April, 1893. As to the power of urban authorities to repair fences surrounding burial grounds, see 24 & 25 Vict. c. 61, s. 21, re-enacted in Schedule V., *post*.

The statutes which provided for the procuring of public libraries and public museums have all been repealed and consolidated by the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), which is set out in the Appendix.

24 & 25 Vict. c. 27, s. 39, renders persons who wilfully injure works of art, monuments or statues in public streets punishable as a misdemeanor.

(d) As to the making, confirming, and publishing of bye-laws, see sections 182—9, *post*; and as to the enforcing them, see section 251, *post*. The section in the text gives a power not previously enjoyed—namely, one for the removal of persons offending against the bye-laws. It is necessary that the grounds should be actually vested in the authority before they make bye-laws, and the Local Government Board have declined to confirm bye-laws unless the grounds are so vested. Model bye-laws have been issued under this section.

By a scheme made under the Metropolitan Commons Act, 1866, and confirmed by the Metropolitan Commons Supplemental Act, 1877, it was provided that a common should be dedicated to the use and recreation of the public as an open and unenclosed space for ever, and the Metropolitan Board of Works were empowered to frame bye-laws and regulations for the prevention of nuisances and the preservation of order on the common. The board made a bye-law prohibiting the delivery of any public speech, lecture, sermon, or address of any kind, except with the written permission of the board first obtained, and upon such portions of the commons, and at such times as might be by such written permission directed and sanctioned by the board:—Held, that such bye-law was valid. No right of the general public to hold meetings on a common is known to the law. *De Morgan v. Metropolitan Board of Works*, 5 Q. B. D. 155; 49 L. J. M. C. 51; 42 L. T. (N.S.) 238; 28 W. R. 489; 44 J. P. 296. A bye-law relating to a common provided that "no person shall shoot or chase game or other birds or animals on the common." The respondent carried a tame pigeon and a falcon, and, when on the common he let them both go, and ran after them for half a mile, watching the chase:—Held, that this was an offence within the meaning of the bye-law. *Harper v. Mitchell*, 44 J. P. 378.

Under the section in the text the local board made bye-laws for the regulation of a pleasure ground within their jurisdiction. One bye-law provided that no person should suffer any fowl belonging to him to enter or remain in the pleasure ground. The fine for offending was 5*l.* B.'s six fowls strayed inside, there being no fence sufficient to prevent them:—Held, that the justices were right in refusing to convict, as the bye-law was repugnant to the law of England, and was not warranted by the section. *Torquay Local Board v. Bridle*, 47 J. P. 183.

Urban authority may provide public clocks.

165. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at

night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient. **Section 165.**

In districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), has been adopted, it is provided by section 46 of that Act that the above section shall be extended so as to enable any urban authority to pay the reasonable cost of the repairing, maintaining, winding-up, and lighting any public clock within their district though not vested in them. See the Act itself, *post*. The provision in the text does not empower the urban authority to repair or restore clocks not *provided* by themselves and not transferred to them, such as the clock of a parish church. Whether they can affix a public clock to a church as a public building is a matter of doubt. Perhaps they could do it with a faculty from an ecclesiastical court; otherwise it would seem that they cannot.

10 & 11 Vict. c. 34, s. 143, contains a similar provision as to clocks.

MARKETS AND SLAUGHTER-HOUSES.

166. Where an urban authority are a local board or improvement commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by Schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two-thirds of their number, to do the following things, or any of them, within their district: (a)

Urban authority may provide markets.

To provide (b) a market place, and construct a market house and other conveniences, for the purpose of holding markets:

To provide houses and places for weighing carts:

To make convenient approaches to such market:

To provide all such matters and things as may be necessary for the convenient use of such market:

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes:

To take stallages, rents, and tolls (c) in respect of the use by any person of such market:

But no market shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges (d) enjoyed within the district (e) by any person (f) without his consent.

(a) For the definition of "local board," see section 4, *ante*, p. 4; of improvement commissioners, section 4, *ante*, p. 4; of "owners," section 4, *ante*, p. 6.

It will be seen that there is no compulsion upon a local board to act, notwithstanding the resolution of their constituents; and that there must be in the case of a town council, the consent of two-thirds of all the members of the board, not of that of a meeting.

It must be noticed that there is only power to establish a *market*. No power is given to establish a *fair*, which is not now favoured by public opinion. It must also be noticed that the market place is to be within the district of the urban authority. As to what is a fair, see *Collins v. Cooper*, 9 T. L. R. 250.

(b) Sections 175, 176, *post*, contain the powers which enable the authority to provide these places, houses, and approaches, compulsorily if necessary. By letters patent in 34 Car. 2, the king granted market rights "*in sine juxta*," a certain place called Spittle Square to one who was lessee of the square and had acquired the greater part of the reversionary interest in it. The grantee or his successors in title

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laid out his square as a market place, with four internal streets. The land immediately surrounding the square was afterwards laid out in four external streets, but it did not appear to whom the property in this surrounding land at any time belonged. There was evidence of a usage from the time of living memory to grant licenses and take tolls for the sale of marketable articles over parts of the external streets, as well as over the market place and the internal streets. It was held that under the grant "*in sine juxta*," the market rights extended into the four external streets as well as over the market place and the four internal streets; and that the inference from the evidence and documents was that the streets were dedicated to the public subject to the exercise of the market rights. *Attorney-General v. Horner*, 11 App. Cas. 66; 55 L. J. Q. B. 193; 54 L. T. (N.S.) 281; 34 W. R. 641; 50 J. P. 564.

B. being entitled to a market on the manor of K., which was held in the public street on B.'s soil, removed it to another site in K., which site he had demised, without demising the franchise, for a term of years. Per LITTLEDALE, J.: The removal was bad, because the lord of the market ought to be the owner of the soil on which the market is held. By all the court: The removal was at any rate bad, unless the public had the same privilege in the new market as in the old; and, therefore, it appearing that no toll had ever been taken in the old market, but that the lease, after a covenant by the lessees to allow the soil to be used solely for the market, empowered them to impose rents for the liberty of selling in the market, the court held that the removal was bad, and that the site of the old market might be used on market days as it was before the removal. *R. v. Starkey*, 7 A. & E. 95; 6 L. J. K. B. 202.

Where the lord of a manor proved a market to have been immemorially holden in certain places within a manor it was held not to be a necessary inference (no grant being produced) that the market was granted to be holden in those places only, and that the jury might presume from circumstances that the market was granted to be holden in any convenient place within the manor. *De Rutzen v. Lloyd*, 5 A. & E. 456; 5 L. J. K. B. 202. And see *Wortley v. Nottingham Local Board*, 21 L. T. (N.S.) 582; 23 J. P. 806, where it was held that a corporation might remove part of a market to any other convenient place within the limits specified in the original grant. A corporation, being lords of a market and owners of the soil, are entitled at common law to remove a market. But where acting as a local board they take steps under the Act to set up a market in a new place, they can only act under the powers and subject to the provisos of the statute, and are not entitled to fall back on their common law right. Per PAGE WOOD, V.C., in *Ellis v. Bridgnorth (Corporation of)*, 2 J. & H. 67; 4 L. T. (N.S.) 112. In the same case, when tried at common law, it appeared that the corporation had removed the market from the place at which it had been immemorially claimed. It was held that the occupiers of houses adjoining the old market place might maintain an action for disturbance of those rights which they had hitherto enjoyed of erecting stalls opposite their houses on market days. It was held also that under the corresponding provisions of 21 & 22 Vict. c. 98, s. 50, the removal of the market was not justifiable, inasmuch as the power to provide market places conferred by that section was expressly qualified by the proviso as to the rights of individuals. 15 C. B. (N.S.) 52; 32 L. J. C. P. 273; 8 L. T. (N.S.) 658; 12 W. R. 56. But where a local Act imposed a penalty for exposing for sale meat, &c., in the streets of a town, so that such meat, &c., projected over any footway, &c., with an exception in favour of stalls in such parts of the streets as had been theretofore used for the purpose at the time of the usual market, and subsequently the local board made bye-laws appointing certain places for markets for certain descriptions of goods on market days, it was held that the provisions of the local Act did not exempt from liability to penalties a person who violated the bye-laws by exposing for sale meat, &c., at a place other than that appointed by the board, notwithstanding that the place had for many years been used for such sales by such persons and others. *Savage v. Brook* 15 C. B. (N.S.) 264; 33 L. J. M. C. 42; 9 L. T. (N.S.) 334.

As to enlarging a market under a local Act, see *Attorney-General v. Cambridge (Mayor, &c., of)*, L. R. 6 H. L. 303; 22 W. R. 37.

Under the powers of an Act of 1844 the corporation of Manchester purchased the manorial rights of the manor of Manchester, which was co-extensive with one of the six townships included in the borough. Among these rights was an ancient franchise to hold a market, which appeared to have been a Saturday market. After this, by the Manchester Market Act, 1856, the corporation were empowered to hold markets on such days as they should think fit, at any places within the borough

which they should appropriate as market places, and to charge any tolls, not exceeding those mentioned in the schedule to the Act (which were higher than the old accustomed tolls), and to make certain charges for weighing, which could not have been made under the old franchise. It was held that there being under the Act a change of time, a change of place, an alteration of old charges, an imposition of new charges, and an extension of the market from the township to the borough, the effect of the Act was to give the corporation new rights of holding markets in substitution for the old franchise, and that the old franchise was extinguished. *Manchester (Mayor of) v. Lyons*, 22 Ch. D. 287; 47 L. T. (N.S.) 677. It may be inferred from the judgment in this case that an action for disturbance of a market created by virtue of a statute will lie as in the case of an ancient market franchise. The corporation had brought an action to restrain the defendants from selling eggs and dried fish on market days in their shop. The shop was situate in a street which adjoined one side of one of the plaintiff's markets, and on the opposite side of the street from, but not opposite to, the entrance from that street into the market. The defendants only sold their own goods in their shops in the ordinary course of business. It was held that this was no disturbance of the statutory right of market.

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The plaintiffs were down to 1855 seised in fee of an ancient market for the sale of cattle, known as Smithfield market, and were entitled to certain tolls in respect of cattle exposed for sale in the market. In 1855 the Smithfield market was by Act of Parliament removed to Islington; but all privileges were expressly preserved to the plaintiffs, and it was enacted that no new market for the sale of cattle should be opened within a distance of seven miles from St. Paul's Cathedral. One of the defendants became, in 1854, lessee of certain premises about 600 yards distant from the Islington market and within the distance of seven miles from St. Paul's and converted them into lairs and receptacles for cattle containing accommodation for about 400 head. Some of the cattle were from time to time sold by the defendants upon the premises between the market days, which were held on Mondays and Thursdays. Beyond a uniform charge for lairage, there was nothing in the nature of a toll upon sales effected by other persons than the defendants; but when the defendants themselves acted as salesmen they charged the same commission as if the cattle had been sold in the plaintiff's market. The cattle thus sold in the interval between the two markets would, if there had been no opportunity for sale between the two markets, have found their way to, and have been sold in, the plaintiff's market:—Held, on these facts, that an action was maintainable against the defendants for a disturbance of the plaintiff's market. *London (Mayor, &c., of) v. Low*, 49 L. J. Q. B. 144; 42 L. T. (N.S.) 16; 28 W. R. 250; 44 J. P. 169.

In boroughs, the limits of which for the purposes of parliamentary representation have been fixed by 2 & 3 Will. 4, c. 64, s. 35, Sched. O., and which are included in section 1 of Schedules A. and B. to the 5 & 6 Will. 4, c. 76, s. 7, all places within the limits so fixed are, by section 8 of the latter Act, parts of the borough for all purposes; and an ancient borough market may be lawfully held within such limits, although outside the limits of the old municipal borough. A market held in the same town with an old market, if held upon the same day, is a disturbance by intendment of law; but if it is held on a different day it is only evidence of disturbance for the jury. To support an action for disturbance of a market it is not necessary that the defendants should have actually sold; any active interference by him in the conduct of the new market, or participation in its profits or risk, is sufficient. *Dorchester (Mayor, &c., of) v. Ensor*, L. R. 4 Ex. 335; 39 L. J. Ex. 11; 21 L. T. 145; 34 J. P. 167. A market on Monday is *prima facie* an injury to a market on Thursday. As to the granting of an interlocutory injunction in such a case, see *Elwes v. Payne*, 12 Ch. D. 468; 48 L. J. Ch. 831; 41 L. T. (N.S.) 118; 27 W. R. 704.

A charter of Edw. 3 by the king and parliament purported to give the citizens of London and their successors exclusive right of market in a certain area. The charter was not included in the statute roll, but was in the charter roll. A charter of Car. 2 granted to G. and his heirs an exclusive right of market for fruit and vegetables within part of the above area, and this market has been enjoyed ever since. The Great Eastern Railway Company set up a rival fruit market within a quarter of a mile of the latter market, on the ground that G.'s market was overcrowded. It was held (1) that the charter of Edw. 3 had the force of a private Act of Parliament, and amounted to a grant of market to the corporation; (2) that the corporation was entitled to waive any of its rights of market; (3) that G.'s market

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Section 166.**

had by such implied waiver become a legal market; and (4) that G.'s market right had been disturbed by the company's market, and that overcrowding was no defence for the disturbance created by setting up a rival market. *Great Eastern Railway Company v. Goldsmid*, 9 App. Cas. 927; 54 L. J. Ch. 162; 52 L. T. (N.S.) 270; 33 W. R. 81; 49 J. P. 260.

In addition to the above cases as to the right of action for disturbance of a market the following cases may be referred to: *Prince v. Lewis*, 5 B. & C. 363; 2 C. & P. 66; *In re Islington Market Bill*, 3 C. & F. 513; *Holcroft v. Heel*, 1 B. & P. 400; *Mosley v. Chadwick*, 7 B. & C. 47 n.; 3 Doug. 117; *Manchester (Mayor of) v. Pedly*, 4 B. & Ad. 397; *Brecon (Mayor of) v. Edwards*, 1 H. & C. 51; 8 Jur. (N.S.) 461; 31 L. J. Ex. 368; 6 L. T. (N.S.) 293; 26 J. P. 614; *Bridgland v. Shapter*, 5 M. & W. 375; *Yard v. Ford*, 2 Wm. Saund. 171; *Horner v. Freeman*, W. N. (1884), p. 223; *Midleton v. Power*, 19 L. R. Ir. 145; *Downshire v. O'Brien*, *ib.*, p. 380; *Abergavenny Improvement Commissioners v. Straker*, 60 L. T. (N.S.) 756; 38 W. R. 158; 53 J. P. 421; *Birmingham (Mayor, &c., of) v. Foster*, 70 L. T. (N.S.) 371; 10 T. L. R. 309. As to the powers of local authorities in the metropolis to erect posts, &c., so as to interfere with the use of a market, see 18 & 19 Vict. c. 120, ss. 91, 108, and *Horner v. Whitechapel District Board of Works*, 55 L. J. Ch. 148; 53 L. T. (N.S.) 842.

(c) See the next section, note (d).

With regard to the liability of a corporation as owners of a market, the following case may be referred to:—

The defendants (a corporation) were owners of a cattle market, and in the market place they had erected a statue around which they had placed a railing as a fence. The plaintiffs attended the market with their cattle, and occupied a particular site for which they paid a toll. A cow belonging to them, in attempting to jump the railing, injured herself and subsequently died from the injuries. The jury found that the railing was dangerous:—Held, that the defendants having received tolls from the plaintiffs and invited them to come to the market with their cattle, a duty was imposed on them to keep the market in a safe condition, and therefore an action would lie against the defendants for the loss sustained by the plaintiffs. *Lax v. Darlington (Mayor, &c., of)*, 5 Ex. D. 28; 49 L. J. Q. B. 105; 41 L. T. (N.S.) 489; 28 W. R. 221; 44 J. P. 312.

(d) The right referred to in the text means a right acquired adversely to the world and peculiar to the individual. The establishment of a business with the consent of a local board does not give a right, power, or privilege within the meaning of this proviso, if the business consists of sales which are contrary to section 13 of the incorporated Market and Fairs Act (*vide* Appendix), as not being within the person's own shop within the meaning of that section. *Fearon v. Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170; 27 L. T. (N.S.) 33; 36 J. P. 804.

The appellant, a cattle salesman, occupied premises which he used for the sale of cattle under leases granted by the corporation of a borough containing covenants for quiet enjoyment. Afterwards the corporation as the urban authority established a cattle market in the borough and published a list of the tolls. The appellant was convicted of selling cattle for which no toll had been paid in his sale-yard within the borough but not within the limits of the market. On a case stated, it was held that the corporation had not derogated from their grant by establishing a market; that the appellant had not by virtue of the leases acquired any right to sell cattle within the meaning of the above section, which the urban authority could not interfere with by establishing a market. *Spurling v. Bantoft* [1891], 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. (N.S.) 584; 40 W. R. 157; 56 J. P. 135.

(e) The rights of any person in respect of a market out of the district, however near it may be, are not referred to. There may arise a question whether those rights can be infringed by the urban authority, but apparently this section will justify them in exercising all the powers granted by the section, notwithstanding that injury may arise outside their district.

(f) See the definition of this word in section 4, *ante*, p. 6.

Incorporation
of provisions
of 10 & 11
Vict. c. 14, as
to markets.

167. For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847, (a) in so far as the same relate to markets; that is to say,

With respect to the holding of the market or fair, and the protection thereof; (b) and

With respect to the weighing goods and carts; (c) and

With respect to the stallages, rents, and tolls; (d)

Provided that all tolls leviable by an urban authority in pursuance of this section (e) shall be approved by the Local Government Board.

An urban authority may with respect to any market belonging to them make bye-laws (f) for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market. (g)

(a) That is, 10 & 11 Vict. c. 14. See the clauses in the Appendix, and the notes thereon. The references in this section are to the headings in that statute, and do not lead to any inference as to the power to hold a fair.

(b) Sections 12 to 16. It may be here observed that 27 Hen. 6, c. 5, prohibited markets from being held on Sundays, Ascension Day, Corpus Christi Day, Assumption Day, All Saints Day, and Good Friday, and this prohibition has not been removed.

(c) Sections 21 to 30. And as to weighing of cattle, see 50 & 51 Vict. c. 27; 54 & 55 Vict. c. 70, in the Appendix, *post*.

(d) Sections 31 to 41.

(e) This should have been the last section (*i.e.*, section 166). The meaning of this proviso appears to be that the tolls proposed to be levied by the urban authority shall be submitted to the Local Government Board for approval, and when the approval shall have been obtained, but not before, they shall be leviable.

Tolls are levied on the sale of articles, and on the weighing and measuring of goods, and on the weighing of carts, and now also of cattle under the Acts referred to in note (c), *supra*.

It must be observed that no approval is required for the rents and stallages. These are in fact matters for special bargains. No one need rent the stalls and places in the market; but all persons having goods for sale must frequent the market, and they as well as the buyers must be protected from unreasonable tolls.

As to the distinction between tolls and stallages, see *Northampton (Mayor of) v. Ward*, 2 Stra. 1238; and *Swindon Central Market Company, Limited, v. Panting*, 27 L. T. (N.S.) 578. Stallage is a payment due to the owner of a market, in respect of the exclusive occupation of a portion of the soil. Therefore when a person used a market with a chair and a *ped*, that is a wooden or wicker basket, 4 feet long, 2½ feet wide, and 2 feet high, with a lid, which being turned back and supported by pieces of wood not fixed in the soil, formed a table on which he exposed provisions for sale, it was held he was liable for stallage. *Yarmouth (Mayor, &c., of) v. Groom*, 1 H. & C. 102; 32 L. J. Ex. 74; 7 L. T. (N.S.) 161; 8 Jur. (N.S.) 677; see also *Reg. v. Caswell*, L. R. 7 Q. B. 328; 41 L. J. M. C. 108; 26 L. T. (N.S.) 574; 20 W. R. 624; 36 J. P. 645.

(f) See as to the making, confirming, and publishing of bye-laws, sections 182—185, *post*. There is an addition in this section to the provisions as to publication. Section 251, *post*, provides for the enforcing of the bye-laws. It will be observed that there is no reference here to *fairs*. A bye-law for the regulation of a market, setting apart different places for the carrying on of wholesale and retail trades, is not unreasonable as being in restraint of trade. *Strike v. Collins*, 34 W. R. 459; 50 J. P. 196; 2 T. L. R. 421.

(g) See in section 306, *post*, the penalty for injuring or defacing the boards on which the bye-laws are inscribed.

168. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act, 1862, (a) of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths (b) in number and value of the members present, either personally or by proxy, Power for sale of under-taking of market company to urban authority.

Section 168. at a meeting specially convened with notice of the business to be transacted, may sell^(c) and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights, powers,^(d) and privileges, and all or any of the markets, premises, and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of purchase.

(a) That is, 25 and 26 Vict. c. 89. This section does not refer to a company established under a local Act.

(b) In 21 & 22 Vict. c. 98, s. 53, it was three-fifths.

(c) The power of sale, as it seems, overrides any provisions which may be contained in any local Act applicable to the markets which provided for the sale of it. A similar provision is contained in section 63, *ante*, p. 89, as to water, and in section 162, *ante*, p. 225, as to gas, except that the sanction of the Local Government Board is not required for the purchase of the market. But if a loan be required for effecting the purpose, as the Board must sanction the loan, their approbation of the purchase must be obtained.

(d) *Quære*, will this word carry all special statutory powers which are independent of the property in the market? The affirmative appears to be the better opinion.

Power to
provide
slaughter-
houses.

169. Any urban authority may, if they think fit, provide slaughter-houses,^(a) and they shall make bye-laws^(b) with respect to the management^(c) and charges for the use of any slaughter-houses so provided.

For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847,^(d) with respect to slaughter-houses shall be incorporated with this Act.

Nothing in this section shall prejudice or affect any rights, powers, or privileges of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848,^(e) for the purpose of making and maintaining slaughter-houses.

(a) For the definition of a slaughter-house, see section 4, *ante*, p. 20.

(b) See note (f) to section 167, *ante*, p. 232.

(c) This term is somewhat vague, but is comprehensive.

(d) That is, 10 & 11 Vict. c. 34. Sections 125—131, which are here incorporated, are printed in the Appendix, where the notes require attention. In districts where the Public Health Acts Amendment Act, 1890, has been adopted, the provisions of 10 & 11 Vict. c. 34, here incorporated, are amended in some important particulars.

See sections 29—31 of that Act, *post*.

See as to slaughter-houses in the metropolis, 54 & 55 Vict. c. 76, s. 20.

Slaughter-houses for horses and other cattle not required for butchers' meat, are regulated by 26 Geo. 3, c. 71 (but the power to grant licenses under that Act is now transferred to district councils by the Local Government Act, 1894, s. 27 (2), *post*), and 7 & 8 Vict. c. 87, and 12 & 13 Vict. c. 92, which refer principally to the prevention of cruelty to animals.

The Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), ss. 17—20, contains provisions relating to slaughter-houses, but these apply only by virtue of a special Act. They are incorporated as regards a local authority under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 32, which enables such authority to provide landing places, &c., for the sale, slaughter, or disposal of foreign animals.

(e) That is, 11 & 12 Vict. c. 63.

Notice to be
affixed on
slaughter-
houses.

170. The owner or occupier of any slaughter-houses licensed or registered^(a) under this Act shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and

legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be. Section 170.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction.(b)

(a) The sections incorporated from 10 & 11 Vict. c. 34, enable the urban authority to license slaughter-houses newly established, and to register those which have been previously established. It is true that this section would appear to take effect from the present time, but the same provision was contained in 37 & 38 Vict. c. 89, s. 49. It cannot, however, operate upon premises licensed or registered before this last Act.

(b) As to the recovery of this penalty, see section 251, *post*.

POLICE REGULATIONS.

171. The provisions of the Towns Police Clauses Act, 1847,(a) with respect to the following matters (namely,) Incorporation of certain provisions of 10 & 11 Vict. c. 89.

- (1.) With respect to obstructions and nuisances in the streets ; and
- (2.) With respect to fires ;(b) and
- (3.) With respect to places of public resort ; and
- (4.) With respect to hackney carriages ;(c) and
- (5.) With respect to public bathing ;

shall for the purpose of regulating such matters in urban districts, be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority ; and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated,(e) a license granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the license, or until the next general licensing meeting where a day for such meeting is appointed.

(a) That is, 10 & 11 Vict. c. 89. By section 4, it is provided that by the use of these words the clauses of that Act applicable to the particular subject shall be incorporated, but in order to understand the incorporated clauses attention should be paid to other clauses in the Act, and consequently such as appear to be requisite are printed in addition to the clauses actually incorporated. It will be found that in the Appendix No. (1) includes sections 21—29, No. (2) sections 30—33, No. (3) sections 34—36, No. (4) sections 37—68, and No. (5) section 69. The notes on these sections in the Appendix should be referred to.

(b) See section 157, *ante*, p. 204, as to bye-laws respecting buildings and section 66, *ante*, p. 91, as to the providing of fire plugs and the prevention of fires.

**Note to
Section 171.**

(c) The provisions of the Towns Police Clauses Act, 1847, relating to hackney carriages have been extended and applied to omnibuses, stage coaches, &c., by 52 & 53 Vict. c. 14, which is set out in full in the Appendix. By section 2 of that Act it is to be deemed to be incorporated with the Public Health Act, 1875, by the provisions in the text.

(d) The last interpretation removes a difficulty which has often been felt in respect of "the prescribed distance" in local government districts where there is no prescribed distance, and also prevents the inconvenience resulting from the contiguity of local districts.

(e) This enactment removes an impression which prevailed generally, though whether correctly or not may be doubted, that though the owner of a carriage was to be licensed for a year only, the driver when once licensed retained his license during the rest of his life.

(f) It will be seen that the incorporated clauses enable bye-laws to be made in respect of hackney carriages and public bathing; and the Local Government Board have issued modern bye-laws on these subjects. The subjects of such bye-laws and the decisions upon them appear in the Appendix where the enactments are printed.

Urban authority may make bye-laws for licensing horses, boats, &c., for hire.

172. Any urban authority may license the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages, (a) and may make bye-laws (b) for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge. (d)

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make bye-laws (b) for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge. (d)

(a) For these, see 10 & 11 Vict. c. 82, ss. 37—68 in the Appendix.

(b) As to the making, confirming, and publishing of bye-laws, see sections 182—6, *post*, and as to the enforcing of them, see section 251, *post*.

(c) Model bye-laws under this section have been issued. From the memorandum prefixed to these, the following practical remarks are taken:—"It should be noticed that the effect of sections 46 and 47 of 10 & 11 Vict. c. 89, as applied to the case of a driver or conductor of a horse, pony, mule, or ass standing for hire, is to require every such conductor to obtain a license from the urban authority, and to render liable to a penalty any person who acts as a driver or conductor without having obtained such license, or during the time that his license is suspended, or who lends or parts with his license except to the proprietor of the horse, pony, mule, or ass. The proprietor will also be liable to a penalty if he employ any person as a driver or conductor who has not obtained a license, or during the time that his license is suspended. It will be in the discretion of the urban authority to grant or refuse a license; and before deciding upon any application they will doubtless satisfy themselves as to the qualification of the applicant for employment as a driver or conductor. A license from the urban authority is a qualification which the statutory provisions above noticed recognise as indispensable in the case of every person who acts as a driver or conductor."

(d) Model bye-laws have also been issued with reference to pleasure boats and vessels. The memorandum attached to this series is deserving of careful perusal, but it is too long for insertion here. It is there pointed out that there is not in the text any express provision as to the conditions under which a license may be granted or refused or as to its duration or revocation. These are said to be matters as to

which the urban authority may adopt such rules as they may deem most expedient. Certain requirements are indicated which ought to be regarded as indispensable, such as the soundness and stability of the boat or vessel, &c., and the power to revoke the license on notice. **Note to Section 172.**

The vessels referred to in the text appear to be vessels used for pleasure, *e.g.*, a yacht, and are not, it is presumed, such as are used for passage or traffic, which are to be dealt with under the Mercantile Marine Acts, where the Board of Trade provides for the qualification of the officers.

This section does not authorise the making of a bye-law prohibiting the letting out of unlicensed pleasure boats for hire, nor can the council of a borough make such a bye-law under section 23 of the Municipal Corporations Act, 1882 ; such a bye-law, therefore, is *ultra vires* and bad, and an information purporting to be made under such a bye-law was held to have been rightly dismissed by the justices before whom it was heard. *Byrne v. Brown*, 57 J. P. 741*n*.

As to boats on lakes or waters in any park or pleasure ground provided by the local authority, see 53 & 54 Vict. c. 59, s. 44 (2), *post*.

PART V.

GENERAL PROVISIONS.

CONTRACTS.

Section 173.

Power of
local autho-
rities to
contract.

Provisions
to contracts
by urban
authority.

173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

174. With respect to contracts made by an urban^(a) authority under this Act, the following regulations shall be observed ; (namely,)

- (1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds^(b) shall be in writing and sealed with the common seal of such authority :^(c)
- (2.) Every such contract shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed :^(d)
- (3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same ; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise :^(e)
- (4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days' public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same ; and such authority shall require and take sufficient security for the due performance of the same :^(f)
- (5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes : Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond

or otherwise, for such sums of money or other recompense as to Section 174.
such authority may seem proper.(g)

(a) It is to be observed that this section applies only to contracts by urban authorities. Contracts with rural district councils are regulated by the ordinary law relating to corporate bodies. The law upon the subject is thus stated by Lord COLERIDGE, C.J., in *Austin v. Guardians of Bethnal Green*, L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. (N.S.) 807; 22 W. R. 406; 38 J. P. 238: "The rule of law is clear, that *prima facie* and for general purposes a corporation can only contract under seal, for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been grafted. The principle that governs these exceptions is conveniently stated in the case of *Church v. Imperial Gas Light Company* (6 A. & E. 846, at p. 861), by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *Ludlow (Mayor of) v. Charlton* (6 M. & W. 815, at p. 822). It is there stated that wherever to hold the rule applicable would occasion very great inconvenience or tend to defeat the very object for which the corporation was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions." All the decided cases can be explained with reference to this principle. Thus it was held that the guardians of a union could not bind themselves by an order, not under seal, for making a survey and map of the rateable property in a parish, such order not being a contract necessarily incident to the purposes for which they were incorporated. *Paine v. Strand Union (Guardians of)*, 8 Q. B. 326; 15 L. J. M. C. 89; 13 Jur. 308. But where guardians gave a verbal order for iron gates for the workhouse, and the gates were supplied, it was held that there was a contract, incident to the purposes for which they were incorporated. *Saunders v. St. Neots Union (Guardians of)*, 8 Q. B. 810; 15 L. J. M. C. 104; 10 Jur. 566. *Paine v. Strand Union* was followed in *Lumprell v. Billericay Union*, 3 Ex. 283; 18 L. J. Ex. 282. There it was held that a builder who had erected works, in addition to those specified in a sealed contract, was not entitled to recover on a *quantum meruit*, as the defendants were incapable of making a new parol contract of that description. But when at a meeting of guardians a contract not under seal was entered into for the erecting of water-closets in the workhouse, and the closets were put up, it was held that the guardians were liable. *Clarke v. Cuckfield Union (Guardians of)*, 16 Jur. 686; 21 L. J. Q. B. 349; 16 J. P. 257. And when guardians suspecting fraud by their clerk in the union accounts employed the plaintiff to investigate them, and during the investigation, and after the appointment of a new clerk, also employed the plaintiff to make up the union accounts for the last half-year, which involved a fresh investigation by him of the old accounts; and the plaintiff was employed under three several resolutions of the board entered in their minute book, but no contract was made under the seal of the board: it was held that as the work was incidental and necessary to the purposes for which the board was created, he was entitled to recover. *Haigh v. Bierley Union (Guardians of)*, E. B. & E. 873; 5 Jur. (N.S.) 511; 28 L. J. Q. B. 62; 6 W. R. 679; 31 L. T. (O.S.) 213; 23 J. P. 195. So a plaintiff was held entitled to recover the price of coals supplied to a workhouse under a parol contract. *Nicholson v. Bradfield Union (Guardians of)*, L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 13 W. R. 731; 14 L. T. (N.S.) 830; 30 J. P. 549. The court in this case followed *Clarke v. Cuckfield Union* (*supra*). But the appointment of a medical officer was held not to come within the exceptions to the general principle that a seal is necessary. *Dyte v. St. Pancras (Guardians of)*, 27 L. T. (N.S.) 342; 36 J. P. 375. And it was held that a contract for the engagement of a master of a workhouse must, in order to bind the guardians, be under seal. *Austin v. Bethnal Green (Guardians of)*, *supra*.

In one case, *Smart v. West Ham Union (Guardians of)*, 10 Ex. 867, PARKE and ALDERSON, BB., expressed dissent from the decision in *Clarke v. Cuckfield Union* (*supra*). As already stated, however, the latter case was followed in *Nicholson v. Bradfield Union*; and in *Young v. Leamington (Mayor, &c., of)*, *infra*, the House of Lords affirmed the correctness of that decision as being founded on justice and convenience. In *Phelps v. Upton Snodsbury Highway Board*, 49 J. P. 408; W. N. (1885), p. 92, a highway board passed a resolution directing their clerk to take the necessary steps to oppose, on behalf of the board, a bill in Parliament which contained provisions contrary to the Railways Clauses Acts, and which would have prejudicially affected certain of the highways within their district. In pursuance of such resolution, the

**Note to
Section 174.**

clerk to the board instructed the plaintiffs, a firm of solicitors, to oppose the bill. In an action by the plaintiffs to recover their costs of opposition from the board, it was held that the purpose for which they had been retained was not incidental to the purpose for which the highway board was incorporated, and that as the plaintiffs had not been retained under the seal of the board, they had no right of action against the board.

By 15 & 16 Vict. c. 85, s. 24, burial boards appointed under that Act are incorporated and have a common seal; and by section 31 a board may enter into contracts with any person for building chapels and other premises, and doing any other works, which contracts must specify the work to be done, the prices to be paid, the time within which the work is to be done, and the penalty the contractor is to pay for non-performance; the contracts are also to be entered in a book to be kept by the board for that purpose. The plaintiff contracted to do certain repairs to the chapels and premises of the defendants for 38*l.* The contract was accepted by the defendants, and the seal of the board was affixed to it. During the work the surveyor of the defendants verbally ordered the plaintiff to do many extra small repairs which were not included in the contract. The plaintiff sought to recover 13*l.*, the cost of these extras, from the defendants, who denied their liability on the ground that they had not been contracted for under the seal of the board. It was held by FRY, L.J., that the board was not liable, as they were bound to contract for such work as the plaintiff had executed strictly in accordance with the terms of section 31. It was held by MATHEW, J., that the board was liable, as the extras were each of trivial importance, and the board could not be expected to affix their seal to every order for small matters as they were required. *Stevens v. Hounslow Burial Board*, 61 L. T. (N.S.) 839; 38 W. R. 236; 54 J. P. 309.

The contracts of corporations with the proper seal affixed are in like position to those of private persons; so that where a contract with the common seal affixed is sent by a corporation to the other party to the agreement to be signed and is so signed or having been first signed by the other party, an alteration is made in its terms by the corporation which is assented to by the other party, and the corporation seal is subsequently affixed, such contract is good. The plaintiffs, a corporation, required and advertised for between 300 and 400 tons of granite spalls for workhouse purposes to be delivered by a particular day. The defendants sent in a tender, which was accepted. The usual form of contract used by the plaintiffs was sent to the defendants. Two days later the defendants sent back the contract signed by them agreeing to deliver the quantity by the day fixed, but adding the words "weather and other circumstances permitting." Four days later the plaintiffs wrote to the defendants acknowledging the receipt of the signed contract, but pointing out that they (the plaintiffs) had erased the words "other circumstances." On the same day the defendants wrote to the plaintiffs that they had put the order in hand. Four days later the plaintiffs affixed their common seal to the contract. The defendants did not execute any part of their contract by the day specified, alleging that want of ships and stress of weather had prevented them from so doing. After a month's delay the plaintiffs were obliged to purchase granite spalls at a higher price than that tendered by the defendants, and brought their action for damages for breach of the agreement:—Held, that as the defendants had assented to the alteration in the contract made by the plaintiffs, there was mutuality between the parties at the time the seal was affixed, and that consequently the plaintiffs were entitled to succeed in their action. *Dartford Union (Guardians of) v. Trickett and Sons*, 59 L. T. 754; 53 J. P. 277; affirmed in C. A., 5 T. L. R. 619.

A lessee of buildings belonging to a municipal corporation wrote letters to the mayor and chairman of the public improvements committee of the corporation, which had not been appointed under seal, offering to surrender his lease, pull down the existing buildings and erect new buildings, provided the corporation would grant him a new lease on specified terms. These proposals, subject to agreed modifications, were accepted by the committee and approved by the council, but not under seal, and this approval was communicated to the lessee by letter from the town clerk. Afterwards the lessee withdrew his offer. It was held, following *Kidderminster (Mayor, &c., of) v. Hardwick*, L. R. 9 Ex. 13; 43 L. J. Ex. 9; 29 L. T. (N.S.) 612; 22 W. R. 160, that the contract not having been under the seal of the corporation, nor signed on their behalf by any person authorised to do so, nor ratified under seal, nor part performed nor acted on, could not be enforced by the corporation. *Oxford (Mayor, &c., of) v. Crow* [1893], 3 Ch. 535; 69 L. T. (N.S.) 228; 42 W. R. 200; 8 R. 279.

(b) 11 & 12 Vict. c. 62, s. 85, placed the limit at 10*l.*, but this was extended by 37 & 38 Vict. c. 89, s. 30, to 50*l.*

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(c) The provisions of this paragraph are imperative and not directory only. When a local board engaged with a builder to perform certain works with reference to a sewer, but there was no contract under seal, it was held that though the works were executed no action could be maintained on the contract. The court proceeded upon the ground that the local board must charge the rates with the cost of the contract, and that they could not do so unless they fulfilled the exigencies of the statutes by entering into the contract in strict conformity with its requisitions. *Frend v. Dennett*, 4 C. B. (N.S.) 576; 27 L. J. C. P. 314; 4 Jur. (N.S.) 897; 23 J. P. 56. And the Court of Chancery afterwards decided that the relief in equity could be given to the contractor (5 L. T. (N.S.) 73). In a case decided in 1878, the facts were as follows:—The defendants, an urban authority, verbally directed their surveyor to employ the plaintiff to prepare plans for offices. The plans were prepared by the plaintiff, and the defendants advertised for tenders for building the offices in accordance therewith, but when these were sent in it was found that the plaintiff's plans were upon too extensive a scale, and the intended offices were not erected. There was no ratification under seal of the act of the plaintiff's surveyor in procuring the plans. At the trial, the jury found that the offices were necessary for the purposes of the defendants, and that the plaintiff's plans were necessary for the erection of the buildings for which they were designed. It was held by the Court of Appeal, affirming the decision of LINDLEY, J., that, assuming the contract was founded on an executed consideration, the plaintiff could not recover, for the section was imperative. *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. (N.S.) 115; 27 W. R. 123; 43 J. P. 284. This decision has since been considered and followed by the House of Lords; that august tribunal has held that the provisions of this paragraph are obligatory and not merely directory, and apply to an executed contract of which the urban authority have had the full benefit and enjoyment, and which has been effected by their agent duly appointed under their common seal. *Young v. Leamington (Mayor, &c., of)*, 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. (N.S.) 1; 31 W. R. 925; 31 J. P. 660.

A petition was presented by the plaintiffs and the defendants to the Local Government Board, stating an agreement whereby the plaintiffs were to transfer to the defendants certain land forming part of the plaintiffs' district, on condition that the defendants should adopt a certain road and dedicate it as a public highway. The agreement referred to was not under seal, but the petition was sealed with the common seals of the plaintiffs and the defendants. The cost of completing the road was estimated at over 50*l.* On action for specific performance of the agreement it was held that under the above section the agreement must be under seal, and that the petition though under seal was not a deed, and, therefore, was not a contract under seal within the section. It was held further that if the deed was valid the local authority had no power to enter into an agreement for the dedication of a road or a street as a highway. *Tunbridge Wells Improvement Commissioners v. Southborough Local Board*, 60 L. T. (N.S.) 172; 5 T. L. R. 107; W. N. (1888), p. 237.

Where the urban authority are a municipal corporation, they cannot be treated as a separate body for the purpose of this Act. A contract with the corporation as a sanitary authority is substantially a contract with the corporation. *Andrews v. Ryde (Mayor, &c., of)*, L. R. 9 Ex. 302; 43 L. J. Ex. 174; 23 W. R. 58.

The provisions of this paragraph do not apply to a contract under 50*l.* Such a contract may be made by parol. Per BRAMWELL, L.J., in *Hunt v. Wimbledon Local Board (supra)*. The paragraph applies only to a contract to which the parties, at the time of entering into it, contemplate that it shall exceed that sum. Therefore, when scarlet fever had broken out, and an urban authority appointed a committee under section 200, and a medical man agreed verbally with the committee on behalf of the urban sanitary authority to attend patients at the rate of 5*s.* 3*d.* per tent per day, and attended until the amount due was nearly 100*l.*, it was held, affirming the judgment of STEPHEN, J., that although more than 50*l.* became due it was not a contract "whereof the value or amount exceeds 50*l.*" within the meaning of the section, because at the time of entering into it the parties had not ascertained that it would exceed 50*l.*, and that the urban authority were liable to the medical man. *Eaton v. Basker*, L. R. 7 Q. B. 529; 50 L. J. Q. B. 444; 44 L. T. (N.S.) 703; 29 W. R. 597; 45 J. P. 616.

The defendants, an urban authority, by contract not under seal, employed the plaintiffs as engineers to do certain work. The plaintiffs performed part of the work,

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exceeding in value 50*l.*, and then required the defendants to affix their seal to the contract. This the defendants did, believing that it was for the benefit of the rate-payers of the district that the contract should be completed. It was held by CAVE, J., that as part of the work was unperformed when the seal was affixed, and there was consideration for affixing it in the plaintiffs' promise to complete the work, it was competent for the defendants to constitute the contract a good contract under seal within section 174 in respect of the work already done; and, therefore, that the plaintiffs were entitled to maintain their action for the value of that work. *Melliss v. Shirley Local Board*, 14 Q. B. D. 911; 54 L. J. Q. B. 408; 52 L. T. (N.S.) 544. (Note that the decision in this case was reversed upon another point: 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. (N.S.) 810; 34 W. R. 187; 50 J. P. 214.)

An agreement by a local board compromising an action is not within this section, and is not void by reason of its not being under seal. *Attorney-General v. Gaskell*, 22 Ch. D. 537; 52 L. J. Ch. 163; 31 W. R. 135; 47 L. T. (N.S.) 566.

1 Vict. c. 78, s. 44 (repealed and substantially re-enacted by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 141), after reciting that it was expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund, provided that any order of the council of any borough for the payment of money out of the borough fund might be removed into the court by *certiorari*. A resolution was passed by a corporation ordering the payment of certain sums, each exceeding 50*l.*, to contractors for costs incurred in paving a street, no contract having been entered into under the seal of the corporation. On an application for a *certiorari* to bring up and quash such resolution on the ground that it was a misapplication of the borough funds under the Act above cited, it was held that as the work was useful and done at a reasonable cost, and there was no suggestion of corruption or partiality there had been no misapplication, and the court in its discretion refused to grant the *certiorari*. *Reg. v. Norwich (Mayor of)*, 30 W. R. 752; 46 J. P. 308 *n.* From this case and that of *Reg. v. Prest*, 16 Q. B. 32, it is to be inferred that a contract for over 50*l.*, though it may not be enforceable by reason of not being under seal, is nevertheless not absolutely void. This view of these decisions was adopted by the court in *Bournemouth Commissioners v. Watts*, 14 Q. B. D. 87; 54 L. J. Q. B. 93; 51 L. T. (N.S.) 823; 33 W. R. 280; 49 J. P. 102. There in an action by a local authority to recover paving expenses under section 150, it appeared that part of the work to an amount exceeding 50*l.*, had been done by contractors who had no contract under seal. It was held that this was no defence to an action for recovery of the expenses. It is to be observed, however, that it is difficult to reconcile this decision with the judgments in *Frend v. Dennett*, *ante*, p. 241.

"The enactment relates to a contract which is the act of both parties, and is applicable not to one of them alone, but to both of them. I do not mean to say that the section makes anything particularly necessary upon the part of the contractor, but it requires that the evidence of the obligation of the two parties must be in writing and sealed with their seals."—Per BRAMWELL, L.J., in *Hunt v. Wimbledon Local Board*, *supra*.

11 & 12 Vict. c. 63, s. 151, exempted the contracts of local authorities from stamp duty. That exemption was taken away by 35 & 36 Vict. c. 79, s. 42, and has not been restored. As to the effect of a local Act incorporating the first-mentioned Act, and thereby extending the exemption to deeds executed under the local Act, see *Bath (Mayor, &c., of) v. Commissioners of Inland Revenue*, 40 L. J. Ex. 181; 20 W. R. 80.

(d) The principle of the above decision of *Frend v. Dennett* applies to the specification of these several matters. See *Young v. Leamington (Mayor of)*, *supra*. From the observations of the Lords in that case, it may possibly be inferred that this sub-section is mandatory and not directory, but it must be observed that "shall" is the word used.

A contract between the local board and the plaintiffs for levelling, paving, &c., certain streets, provided that the plaintiffs should be paid when the money was collected from the different owners. It turned out that the money could not be obtained from these owners on the ground that the notices given to them by the board were bad:—Held, that whether the collection of the money was a condition precedent to the right to sue for the price of the work or not, there was an implied contract on the part of the board to take all necessary steps for collecting the money, and that they were, therefore, liable to the plaintiffs for their charges. *Worthington v. Sudlow*, 2 B. & S. 508; 31 L. J. Q. B. 131; 6 L. T. (N.S.) 283.

(e) This sub-section is only directory, because it is something for the urban authority only to do, while sub-section 2 is something to be done by both parties, and

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is imperative. And the obtaining of the estimate and report from the surveyor is not a condition precedent to entering into the contract. Therefore the local board will be liable for a breach of the contract entered into for the performance of works, though the estimate and report were not obtained. *Nowell v. Mayor, &c., of Worcester*, 9 Ex. 457; 23 L. J. Ex. 139; 2 C. L. R. 981; 22 L. T. (o.s.) 244; 18 J. P. 88. And see *Young v. Leamington (Mayor of)*, *supra*. With regard to this sub-section the Court of Queen's Bench decided that as between the local board and their constituents, "If the work may be both executed and repaired under the provisions of the Act, there must be an estimate and repair on the execution *and* the repair; but if the work may be only executed, *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In the case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would the estimate and report on repair where none can be done." *Cunningham v. Wolverhampton Local Board*, 7 E. & B. 114; 26 L. J. M. C. 33; 21 J. P. 262.

(f) This sub-section is directory only. This and the preceding sub-section relate to "things to be done before contracts are entered into, and done by the urban authority, the contractor having nothing to do with the matters mentioned."—Per Lord BRAMWELL, in *Young v. Leamington (Mayor of)*, *supra*.

With reference to the construction and effect of a contract for works between a local board and contractor, see *Roberts v. Bury Improvement Commissioners*, L. R. 5 C. P. 310; 39 L. J. C. P. 129; 22 L. T. (n.s.) 132; 18 W. R. 702; 34 J. P. 821.

Where the authority submit plans and estimates for execution, they do not by implication guarantee that the work can be successfully executed according to such plans and estimates. *Thorn v. London (Mayor, &c., of)*, 1 App. Cas. 120; 45 L. J. Ex. 487; 34 L. T. (n.s.) 545; 24 W. R. 932; 40 J. P. 468.

With regard to the security to be taken, this is usually by the guarantee of sureties; and, therefore, great care must be taken that the sureties are fully informed of the nature of the undertaking and all the circumstances connected with it. When a local board represented that the works would be executed under the supervision of their surveyor, and did not communicate the fact that they had engaged that another surveyor should be joined in this supervision, it was held that the contractor's surety was discharged from his liability by reason of this concealment. *Stiff v. Eastbourne Local Board*, 19 L. T. (n.s.) 408; 20 L. T. (n.s.) 339; 17 W. R. 428.

A surety for a contractor is not discharged from liability although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act or omission of the contractor against which the surety has, by the terms of his contract of suretyship, guaranteed the employer. Thus, where the defendants, as sureties, contracted with the plaintiff urban authority that the contractors would well and truly execute a contract for the construction of sewers; and the contract gave to the plaintiffs the right of superintending the works through their engineer; and also provided for the retention of a certain percentage of the contract price of the works until a final certificate should be given by such engineer, six months after his certificate of the completion of the works; and the contractor did portions of the work in a defective manner, and fraudulently concealed it so as to prevent discovery; and the engineer ultimately gave his final certificate, upon which the retention money was paid to the contractors,—in an action by the plaintiffs against the defendants as sureties, upon findings by the jury that the engineer's certificate had been obtained by fraud, but that there was an omission of proper superintendence of the work on the part of the plaintiffs, which led to the scamping of the work, it was held that the mere non-exercise by the plaintiffs of their right of superintendence did not discharge the defendants from their liability as sureties, and that they were not discharged by the fact that the engineer's certificate had been given or by the fact that the retention money had been paid thereon, inasmuch as the mere giving of the certificate was not proved to have altered the position of the defendants for the worse, and both that and the payment of the retention money were procured by a dishonest execution of the work against which the defendants had by their contract guaranteed the plaintiffs. *Kingston-upon-Hull (Mayor, &c., of) v. Harding* [1892], 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. (n.s.) 539; 41 W. R. 19; 57 J. P. 85.

An agreement between a local board and a contractor contained a clause that any dispute between them should be referred to the decision of the clerk of the board. The contractor having brought an action in respect of the agreement, the board

Note to Section 174. applied to a judge at chambers to stay the action, in order to enforce the submission to arbitration. The judge declined to stay proceedings on the ground that the fact of the reference being to the clerk of one of the parties was a sufficient cause for refusing within section 11 of the Common Law Procedure Act, 1854. It was held on appeal that a reference ought to take place, though not to the clerk, and that the case must stand over till the parties could agree as to a referee, or again apply to the court. *Pickthall v. Merthyr Tydvil Local Board*, 2 T. L. R. 805.

For another case in which the court refused to refer a dispute to the surveyor of the local authority, see *Nuttall v. Manchester (Mayor, &c., of)*, "Times," April 28th, 1892.

(g) The plaintiff undertook to execute certain drainage works for the defendants. It was provided by the contract, among other things, that "the works shall be completed in all respects and cleared of all implements, tackle, impediments, and rubbish," before a fixed date, and in case of default the plaintiff agreed to pay certain sums to the defendants as liquidated damages. The works were not completed within the fixed period. It was held that inasmuch as the clearing away of the rubbish was included in the completion of the works, there was only one event, viz., the non-completion of the works by the fixed date, upon the happening of which those sums were to become payable, and that the plaintiff was, therefore, liable in respect of such sums as liquidated damages and not as penalties. *Law v. Redditch Local Board* [1892], 1 Q. B. 127; 61 L. J. Q. B. 172; 66 L. T. (N.S.) 76; 56 J. P. 292.

PURCHASE OF LANDS.

Power to purchase lands.

175. Any local authority(a) may for the purposes and subject to the provisions of this Act(b) purchase or take on lease, sell,(c) or exchange any lands,(d) whether situated within or without their district; they may also buy up any water-mill, dam, or weir which interferes with the proper drainage of or the supply of water to their district.(e)

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall(f) (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge,(g) by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.(h)

(a) There may have been some doubt if the guardians of a union, acting as the rural sanitary authority, sought to acquire lands for the purposes of this Act, they could do so without being bound by the provisions of 5 & 6 Will. 4, c. 69, and without the consent or approval of the Local Government Board unless a loan was required. No such doubt however can now arise as to the powers of a rural district council.

(b) Reference appears here to be made to the provisions as to the purchase of land on compulsory sale contained in the next section, and to the provisions as to the sale of waterworks, gasworks, and markets in the previous sections applicable thereto.

See section 7, *ante*, p. 26, as to the powers of local boards and commissioners to hold lands for the purposes of their Act in the corporate name.

As to the redemption of tithes on land taken for public purposes, see 41 & 42 Vict. c. 42, s. 1.

(c) It does not readily appear how the local authority can have occasion to sell land for the purposes of the Act, unless the sale is for the purpose of acquiring other more convenient land. But 35 & 36 Vict. c. 79, s. 41, enabled sanitary authorities in certain cases to mortgage their property, and this power is contained in section 235, *post*, p. 318.

As to the sale of land by urban authorities as corporations, see sections 108, 109 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and *Davies v. Corporation of Leicester* [1894], 2 Ch. 208; 63 L. J. Ch. 440; 70 L. T. (N.S.) 599; 42 W. R. 610; 7 R. 609.

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As to the power of local authorities to purchase land beyond their strict necessities with a view to reimbursement, see *London (Mayor, &c., of) v. Galloway*, L. R. 1 H. L. 34; 12 Jur. (N.S.) 747; 35 L. J. Ch. 477; 14 L. T. (N.S.) 865; *Quinton v. Bristol (Mayor of)*, L. R. 17 Eq. 524; 43 L. J. Ch. 783; 30 L. T. (N.S.) 112; 22 W. R. 434; 38 J. P. 516; *Gard v. London Commissioners of Sewers*, 28 Ch. D. 486; 54 L. J. Ch. 698; 52 L. T. (N.S.) 827.

A local board entitled to a supply of water from a corporation was held to be justified in selling a superfluity to a neighbouring local board. *Halifax (Mayor, &c., of) v. Soothill Upper Local Board*, *ante*, p. 87.

(d) See the definition in section 4, *ante*, p. 6. As to the power to exchange lands, see *Rolls v. London School Board*, 27 Ch. D. 639; 51 L. T. (N.S.) 567; 33 W. R. 129.

(e) See section 51, *ante*, p. 76.

(f) This word is peremptory; nevertheless, some discretion must be left to the local authority as to their action under this clause, and as to when they will sell. It must be noticed that the Lands Clauses Consolidation Acts referred to in the next section provide for the sale of superfluous lands, but it is presumed that the section in the text supersedes that provision, interposing the control of the Local Government Board.

But for these provisions the local authority could not, as it seems, have sold any of the lands which they had acquired. See *Tepper v. Nicols*, 18 C. B. (N.S.) 121; 11 Jur. (N.S.) 18; 34 L. J. C. P. 61; 13 W. R. 270; 11 L. T. (N.S.) 509.

The authority must be careful not to apply the land so purchased to any other purpose than that for which it was acquired, except with due license properly obtained. Where a corporation under a local Act obtained a piece of land for the purpose of public recreation, they were restrained by injunction from holding a fair and exhibition of cattle upon it. *Attorney-General v. Southampton (Mayor, &c., of)*, 1 Giff. 263; 6 Jur. (N.S.) 46; 29 L. J. Ch. 282. This has been further elucidated in *Attorney-General v. Sunderland (Mayor, &c., of)*, *ante*, p. 227, where a corporation were allowed to build a museum and library on a part of a public park, but were restrained from building a council chamber and offices thereon. See also *Williamson v. Sunderland (Mayor, &c., of)*, 9 T. L. R. 143.

(g) So that, in the latter case, the ratepayers for the current year would obtain the full benefit of the sale.

A mortgage was given including the district fund of a borough. The district fund was formed under the Public Health Act, 1875, the 175th section of which enacts that all surplus lands shall be sold and the proceeds carried to the district fund:—Held, that the section could not apply unless there were surplus lands, and that, as it was not shown that there were any, the mortgage must be treated as pure personalty. Whether if there had been surplus lands, the mortgage must not still have been treated as pure personalty, on the ground that, as the lands were directed by statute to be sold, the doctrine of election was excluded, so that the mortgagee had no interest in anything but money, *quære*. Whether a charge which gives the holder no right against anything except money which has gone as money into a particular fund can ever be treated as giving an interest in real estate because the money has come from real estate, *quære*. In *re Thompson*; *Bedford v. Teal*, 45 Ch. D. 161; 59 L. J. Ch. 689; 63 L. T. (N.S.) 471; 39 W. R. 50; 6 T. L. R. 394.

(h) In *Jersey (Earl of) v. Uxbridge Rural Sanitary Authority* [1891], 3 Ch., at p. 194; 60 L. J. Ch. 833; 64 L. T. (N.S.) 858; 7 T. L. R. 568, STIRLING, J., said: "The words 'general purposes' were referred to as showing that the proceeds of sale might be carried to the credit of the fund out of which general expenses are payable, but it seems to me that the language does not necessarily lead to this conclusion. The rate levied for special expenses is applicable for the general purposes of the Act so far as regards the contributory place in which it is levied. It could hardly be disputed that in the present case the proceeds of sale might be applied in paying off the mortgage of the 10th of February, 1888, which is charged on the rates of the parish of Norwood, and, if this be so, then under section 175, in the absence of any charge, the proceeds would have to be carried to the credit of the same rate."

Section 176.

Regulations
as to purchase of
land.

176. With respect to the purchase^(a) of lands^(b) by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,)

- (1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869,^(c) shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 :^(d)
- (2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice^(e) in the month of December on every owner or reputed owner,^(f) lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands :

- (3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice ; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires :^(g)
- (4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served^(h) the Local Government Board shall take such petition into consideration, and may either dismiss the same,⁽ⁱ⁾ or direct a local inquiry as to the propriety of assenting to the prayer of such petition ; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof :^(k)

(5.) After the completion of such inquiry the Local Government Section 176.

Board may, by provisional order,^(l) empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :^(m)

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons :⁽ⁿ⁾

(a) It is to be observed that this section only applies to purchases. Hence the advantages hereby given are not available for leases. As to the power of a local authority to take lands on lease, see the preceding section.

(b) See the definition in section 4, *ante*, p. 6. A serious question arises whether this provision operates universally. Do sections 327 and 332, *post*, exclude the subjects to which they relate from being taken compulsorily? If so, they will go far to render this section inoperative. The operation of section 332 would be of the most extensive effect. See the notes to these sections.

Facilities are given to municipal corporations by 45 & 46 Vict. c. 50, s. 107, to purchase or otherwise acquire any hereditaments for public purposes, and consequently for purposes to which this Act applies ; and it may sometimes be found convenient by some urban authorities to proceed under it.

(c) 8 & 9 Vict. c. 18 ; 23 & 24 Vict. c. 106 ; 32 & 33 Vict. c. 18. The first-mentioned Act has been amended by an Act passed in 1883, 46 & 47 Vict. c. 15. All these Acts are printed in the Appendix.

(d) 8 & 9 Vict. c. 18, contains two sets of sections : one applicable to agreements which enable persons under disability to sell and convey ; the other to cases where there can be and is no agreement. The local authority may adopt the former set by the operation of this section, but they cannot adopt the latter without observing the formalities prescribed by the latter part of this section.

8 & 9 Vict. c. 18, s. 127, required the sale, within a certain time, of superfluous land, *i.e.*, land not required for the purposes of the undertaking, and a definition whereof is given by Lord CAIRNS in *Great Western Railway Company v. May*, L. R. 7 H. L. 292 ; 43 L. J. Q. B. 233 ; 31 L. T. (N.S.) 137 ; 23 W. R. 141 ; 39 J. P. 54. If no sale were effected within the prescribed time, the land vested in the owner of the adjoining land. The section was not incorporated with 11 & 12 Vict. c. 63, s. 84, and some doubt existed as to whether it applied to land acquired under 21 & 22 Vict. c. 98, and subsequent Acts, but this doubt is now removed. As to the provisions of this Act for the sale of land which is not required for the purposes for which it has been acquired, see the last section.

(e) See in section 267, *post*, how such notices are to be served in general, and the proviso to this section as to the service on commoners. It has been held that the giving of this notice does not bind the local authority to proceed, and that their omission to take the lands specified in the notice gives no right of action to the owner of lands, even after the confirmation of the provisional order empowering

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such lands to be taken. *Burges v. Bristol Sanitary Authority*, 50 J. P. 459; and see *Burr v. Wimbledon Local Board*, W. N. (1887), p. 155. In a case which arose under the corresponding sections of the Education Act, 1870, a school board served on R. a notice to treat, all the previous preliminaries having been complied with. Prior, however, to the service of the notice to treat and to the passing of the Confirmation Act, the board had entertained and adopted, subject to the sanction of the Education Department, a proposal from one B., a neighbouring landowner, for exchanging a portion of the land to be acquired by the board from R. for a piece of B.'s land he undertaking to form the land so to be conveyed to him by the board into a public road. There was evidence to show that such road, when made, would be advantageous to the school intended to be erected. It was held, on motion by R. for an injunction to restrain the board for putting in force their statutory powers with respect to so much of the land comprised in the notice to treat as they proposed to convey to B., that the board were justified in the course they had taken, and could, if they obtained the sanction of the Education Department, carry out the proposal. *Rolls v. London School Board*, 27 Ch. D. 639; 51 L. T. (N.S.) 567; 33 W. R. 129.

(f) For one meaning of the word *owner*, see section 4, *ante*, p. 6, though that is not the only meaning to be adopted in construing this section. In 8 & 9 Vict. c. 18, s. 3, the word *owner* is "understood to mean any person or corporation who under that or the special Act would be enabled to sell or convey land for the purposes of the undertaking." And under this section it was held that notice ought to be given to persons known to be mortgagees of the property intended to be taken. *Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501. But, *quære*, who is meant by a *reputed owner* or *reputed lessee*? And will a notice upon such reputed owner or lessee be available where there is a real owner or real lessee who is not served? It seems that the notice must be served upon the owner, lessee, and occupier. But if the local board can select any person as the reputed owner or reputed lessee there may often be a failure of due notice to the proper parties. 8 & 9 Vict. c. 18 does not refer to reputed owners. However, the poor rate of every parish now contains a column for the owner of the property assessed, and the overseers fill in the column with a name which often represents the reputed owner—that is, the name of a person who is believed by them to be the owner.

Attention should be paid to the ownership of highways and streets, for there is no power to take streets without notice such as is given by the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 16, as to which see *Souch v. East London Railway Company*, L. R. 16 Eq. 108; 42 L. J. Ch. 477; 21 W. R. 590; 37 J. P. 644. Where highways are not repairable by the inhabitants at large, the presumption is that the soil belongs to the owners of adjoining lands, but where they are so repairable, they are vested, in the case of highways in an urban district in the urban authority under section 149, *ante*, p. 169. It is probable that an urban authority need not serve notices in respect of the highways so vested in them.

As to the right of a local board to a way of necessity to lands compulsorily acquired by them for the purposes of a sewage farm, see *Serff v. Acton Local Board*, 31 Ch. D. 679; 55 L. J. Ch. 569; 54 L. T. (N.S.) 379; 34 W. R. 563.

A notice served upon one of several joint owners who act for the rest appears to be sufficient.

The notices and other proceedings correspond with those which are required previous to the introduction of a private bill into Parliament. The standing orders of the Houses of Parliament require copies of the plans to be deposited in the proper offices of both Houses when they are deposited with the Board.

(g) The petition should be written upon folio foolscap paper, and may be signed by the chairman, and countersigned by the clerk of the local authority. The seal should be impressed upon a wafer gummed to the paper. It should be addressed to the President of the Local Government Board, under cover addressed to the Secretary of that Board, Whitehall, London. For further information reference should be made to the circular letter and instructions of the Local Government Board as to application for provisional orders under this section. These documents are set out in *Glen's Local Government Orders*, p. 561.

See section 297, *post*, and the notes thereto, as to the restriction upon the making of a provisional order.

(h) The Board require copies of the newspapers containing the advertisements, and a statutory declaration by the clerk testifying to the due service of the notices upon the owners, lessees, and occupiers, and to their answers. This declaration

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should be upon the same description of paper, and should show how each notice was served.

(i) This dismissal may take place without local inquiry, as the Board may consider that upon the petition and the opposition to it no order should be issued.

(k) These words have been incorporated from 21 & 22 Vict. c. 98, s. 75, but their meaning is not quite obvious. It would appear that when there is consent, no provisional order is necessary. But it is believed that cases occur where parties will not consent to a sale, but will not oppose a provisional order, and consequently may waive an inquiry.

(l) As to this, see section 297, *post*.

(m) If the Act affirming the provisional order gives power to take more lands than those mentioned in the notice, it appears that such additional lands may be taken. *Jacomb v. Huddersfield (Corporation of)*, L. R. 10 Ch. 92; 44 L. J. Ch. 96; 31 L. T. (N.S.) 466; 23 W. R. 100. As to the delineation of the lands in the deposited plans, see *Dowling v. Pontypool, &c., Railway Company*, L. R. 18 Eq. 714; 43 L. J. Ch. 761.

When only a few copies are required, the Local Government Board will supply them; but when a considerable number are required, an arrangement can be made with the government printer for the supply of the copies at a reasonable rate. The statute does not render this service a preliminary to the introduction of the confirming bill. Probably, however, the bill might be stayed by Parliament if it were shown that no copy of the order had been served in time to allow a petition to be presented against it within the appointed time; as section 297, sub-section (7), *post*, only makes the order *prima facie* evidence that all proceedings previous to the making of the order have been duly taken.

(n) See the provisions of 8 & 9 Vict. c. 18, ss. 102—107, as to compensation for common lands.

It may be here observed that where houses or lands are taken under compulsory powers, easements belonging to the owners of adjoining properties not purchased, if they interfere with the proposed use of the houses or lands taken, may be destroyed, the owners being entitled to compensation. The readiest illustration is that of the right to lights, as to which see *Clark v. London (School Board of)*, L. R. 9 Ch. 120; 43 L. J. Ch. 421; 29 L. T. (N.S.) 903; 22 W. R. 354; 38 J. P. 101; *Bedford (Duke of) v. Dawson*, L. R. 20 Eq. 353; 44 L. J. Ch. 549; 33 L. T. (N.S.) 156; 39 J. P. 804; *Baker v. St. Marylebone (Vestry of)*, 35 L. T. (N.S.) 129; 24 W. R. 848. This subject is much too wide to be treated of in the present Work. The various sections of the Lands Clauses Acts in the Appendix, and the notes thereon, may be consulted; but reference must be made to special treatises on these Acts, such as *Lloyd on the Law of Compensation*, *Jepson on the Lands Clauses Acts*, and similar works.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands(a) which they may possess, as and when they can conveniently spare the same.(b) Power to let lands.

(a) See the definition in section 4, *ante*, p. 6.

(b) The authority must remember that they cannot change the purpose for which they have acquired the lands. It will not, therefore, be a convenient sparing of the lands within the meaning of the section, if they simply abandon the purpose for which the lands were required. The Act does not provide for the failure of the purpose.

Reference should be made to 45 & 46 Vict. c. 50, s. 143, which re-enacts 23 & 24 Vict. c. 16, s. 12, and enables surplus rents in a borough to be applied towards the costs of the improvement of the borough under the Sanitary Acts. See upon this *Attorney-General v. Birmingham (Corporation of)*, L. R. 3 Eq. 552.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor Provision for lands belonging to the Duchy of Lancaster.

Section 178. and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors, in right of the said duchy, or any right, interest, or easement, in, through, over, or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855,^(a) the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.^(a)

(a) The statute referred to is 18 & 19 Vict. c. 58.

ARBITRATION.^(a)

Mode of
reference to
arbitration.

179. In case of dispute as to the amount of any compensation^(b) to be made under the provisions of this Act (except where the mode of determining the same is specially provided for),^(c) and in case of any matter which by this Act is authorised or directed to be settled by arbitration,^(d) then, unless both parties concur in the appointment of a single arbitrator,^(e) each party shall appoint an arbitrator to whom the matter shall be referred.

(a) These clauses as to arbitration are taken from 8 & 9 Vict. c. 18, ss. 25—27, which are set out in the Appendix, *post*, and the decisions thereon elucidate the construction and application of this Act.

The Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 24, provides that the Act shall apply to every arbitration under any Act passed before or after the commencement of that Act as if the arbitration were pursuant to a submission, except in so far as that Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act. It follows that while the Arbitration Act, 1889, will not repeal any of the provisions of this or the following sections, it will apply, in so far as it is not inconsistent, to arbitrations under this Act. It has, therefore, been set out in full in the Appendix, *post*.

(b) It was formerly held that the dispute must be as to the amount of compensation and not as to the liability to pay it. *Reg. v. Burslem Local Board*, 1 E. & E. 1077; 28 L. J. Q. B. 345; 2 L. T. (N.S.) 667; 8 W. R. 584; 6 Jur. (N.S.) 696; *Bradby v. Southampton Local Board*, 4 E. & B. 1014; 24 L. J. Q. B. 239; 19 J. P. 644; 1 Jur. (N.S.) 778. And see *Reg. v. Metropolitan Commissioners of Sewers*, 1 E. & B. 694; 22 L. J. Q. B. 234; 17 Jur. 787. These cases, however, were considered in a recent case, *Pearsall v. Brierley Hill Local Board*, 9 App. Cas. 595; 54 L. J. Q. B. 25; 51 L. T. (N.S.) 577; 33 W. R. 56; 49 J. P. 84. In that case it was decided that a person who claims compensation for damage sustained by reason of the exercise of the powers given by the Act, is entitled under section 308 to have the amount of compensation determined by arbitration in the manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the question of amount. This case renders it unnecessary to do more than mention *Burgess v. Northwich Local Board*, 37 L. T. (N.S.) 355; 26 W. R. 19; 45 J. P. 256; and *Uttley v. Todmorden Local Board*, 44 L. J. C. P. 19; 31 L. T. (N.S.) 445; 39 J. P. 56, in which actions were brought on award when the liability was disputed.

(c) See, for example, section 308, *post*, when the dispute may be referred to a court of summary jurisdiction.

(d) See sections 22, 32, 61, 150, 179, *ante*, and section 308, *post*.

(e) The Arbitration Act, 1889, s. 5, enables the court to appoint an arbitrator

in the case where submission provides for reference to a single arbitrator "and all the parties do not after differences have arisen concur in the appointment of an arbitrator." A contract for the execution of works between a local authority and a contractor provided for the reference of differences that might arise to a single arbitrator. A difference having arisen, the contractor made proposals to the local authority with regard to the selection of an arbitrator, but they would not proceed with such selection. Thereupon the contractor served the authority with written notice "to concur in the appointment of a sole arbitrator in the matter." It was held that the notice given was a sufficient notice within the section. It may be stated as a general rule that, where the conditions exist under which the section is applicable, the court or judge has no discretion to refuse to appoint an arbitrator. *Eyre v. Leicester (Corporation of)* [1892], 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. (N.S.) 733; 40 W. R. 203; 56 J. P. 228.

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180. With respect to arbitrations under this Act, (a) the following Regulations shall be observed : (that is to say,) Regulations
as to arbi-
tration.

- (1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority, shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal : (b)
- (2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same : (c)
- (3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation : (d)
- (4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing (e) by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- (5.) If before the determination of any matter so referred any arbitrator dies or refuses, or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing (e) from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- (6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, (f) the matters referred to him shall be again referred

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to arbitration under the provisions of this Act, as if no former reference had been made :

- (7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, *(g)* appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire : *(h)*
- (8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire : *(i)*
- (9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him : *(k)*
- (10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace ; (that is to say,

“ I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

“ *A. B.*.”
- (11.) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanor : *(l)*
- (12.) Any arbitrator, arbitrators, or umpire, appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, *(m)* and may examine the parties or their witnesses on oath : *(n)*
- (13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire : *(o)*
- (14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto : *(p)*

(15.) The award(*q*) of arbitrators or of an umpire under this Act Section 180. shall be final and binding on all parties to the reference.(*r*)

(a) When land has been taken compulsorily by a local board under the powers of the Lands Clauses Consolidation Acts (incorporated by section 176, *ante*, p. 246), and an arbitration takes place to determine the amount of compensation to be paid to the owner of the land so taken, the procedure with regard to such arbitration and the right to costs are wholly governed by the provisions of these Acts, and not by this section. *Ex parte Rayner*, 3 Q. B. D. 446; 47 L. J. Q. B. 660; 42 J. P. 807.

(b) The Court of Exchequer held that when a person agreed with a waterworks company that a person nominated by two others should be appointed arbitrator, and such person being so appointed awarded to the claimant a sum exceeding 50*l.*, the latter was entitled to the cost of the arbitration, although the statutory preliminaries to a reference under the Lands Clauses Consolidation Acts had not in all respects been complied with. *Martin v. Leicester Waterworks Company*, 3 H. & N. 463; 27 L. J. Ex. 432. See also *Collins v. South Staffordshire Railway Company*, 7 Ex. 5; 21 L. J. Ex. 247. But in an arbitration under the Act one arbitrator was appointed by the local authority under their common seal and another arbitrator was appointed by the claimant, but not in writing under his hand. The arbitrators disagreed and appointed an umpire, who made an award in favour of the claimant. It was held that the provisions of the statute not having been complied with, the appointment of the arbitrators, and consequently their appointment of the umpire and his award were invalid, and neither the original submission nor the appointment of the umpire nor the award could be made an order of court. *Gifford v. Bury (Town Council of)*, 20 Q. B. D. 368; 57 L. J. Q. B. 181; 58 L. T. (N.S.) 522; 36 W. R. 468; 52 J. P. 119.

(c) The submission being by deed is not exempt from stamp duty.

The appointment should recite the matter in dispute, otherwise the arbitrator can only learn it from the oral discussion.

The submission is a reference by consent within the meaning of the Common Law Procedure Act, 1854. See *Warburton v. Haslingden Local Board*, *infra*.

It would appear from *Pearsall v. Brierley Hill Local Board*, *ante*, p. 250, that the appointment of an arbitrator does not preclude the party appointing him from afterwards contesting his liability.

A submission is to be deemed to include the provisions contained in the First Schedule to the Arbitration Act, 1889 (see section 2 of that Act); but only in so far as they are not inconsistent with the text (section 24). See the Act in the Appendix, *post*.

(d) As one of the parties is a corporate body, this phraseology is not quite consistent. The word stood in 11 & 12 Vict. c. 63, s. 123, under which Act the appointment in the case of a local board of health was signed by five members of the board, and as one of them might die, the legislature provided thus against the presumed consequence of his death. No such contingency can now arise with reference to the local authority.

(e) See sections 266, 267, *post*, as to the authentication and service of notices.

(f) As to extending the time, see sub-section (8), and note (*i*), thereto.

(g) In *Holdsworth v. Barsham*, 2 B. & S. 480; 31 L. J. Q. B. 145, the arbitrators appointed an umpire before entering on the reference, but after the twenty-one days within which they ought by 11 & 12 Vict. c. 63, s. 126, to have made their award, and it was held that such appointment was not too late. In *Holdsworth v. Wilson*, S. C. in error, 4 B. & S. 1; 32 L. J. Q. B. 289, it was held that the power to appoint an umpire continued until the expiration of the time within which they might have made their award (in this Act two months: see sub-section (9)).

The appointment of an umpire must not be made by drawing lots, for an arbitrator entrusted with the duty of appointing an umpire cannot evade his judicial duty by leaving the appointment to chance. *Pescod v. Pescod*, 58 L. T. (N.S.) 76; W. N. (1888), 2.

(h) The Local Government Board are substituted for the quarter sessions in 11 & 12 Vict. c. 63, s. 126. The Board must make the appointment, and though no time is specified they must do so within a reasonable time. The application should be made to them in writing upon foolscap folio paper. It need not be under seal, but if sealed should be sealed with a seal on a wafer, as wax is frequently broken in the passage.

(i) It must be observed that the authority of the umpire commences at the end of

Note to Section 180. the twenty-one days, or of the extended time in the case of a failure to make the award. This is important, for it has been a common practice for umpires to calculate the time from the date of their receiving notice of the fact that the arbitrators have failed to award. See *Skerratt v. North Staffordshire Railway Company*, 17 L. J. Ch. 161. As to the right of a party to be heard by the umpire, see *Re Maunder*, 49 L. T. (N.S.) 535.

Although no original limit of time is specially mentioned in the text within which an umpire must make his award, yet by analogy to the original limit fixed in the case of arbitrators, an original limit of twenty-one days from the date of the reference to him must be inferred to have been fixed in the case of an umpire, which under sub-section (9) may not extend beyond two months. Two arbitrators, appointed under the Act, met on the 3rd of January and extended the time for making their award till the 20th of February. On the 10th of January they appointed an umpire. On the 1st of February the arbitrators and umpire met and were attended by the parties, but one of the arbitrators retired and refused to proceed any further, and the meeting was adjourned *sine die*. On the 19th of April the umpire made his award. It was held (reversing the decision of *KAY, J.*, 59 L. T. (N.S.) 844) that the award was made too late and must be set aside. It was also held that the date from which the twenty-one days must be reckoned was the 1st of February, when the arbitrators finally disagreed, and not the 20th of February, when their powers expired. *Yeadon Local Board v. Yeadon Waterworks Company (In re)*, 41 Ch. D. 52; 58 L. J. Ch. 563; 60 L. T. (N.S.) 550; 37 W. R. 360; 5 T. L. R. 317.

(k) It has been held that a reference to arbitration under the Lands Clauses Act is subject to the provisions of the Common Law Procedure Act, 1854, with respect to the referring back of an award to the arbitrator, and to the enlarging of the time by the court notwithstanding the expiration of the time within which the award should have been made. *In re Dare Valley Railway Company*, L. R. 4 Ch. 554; 17 W. R. 717; *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46; 24 W. R. 1053. These cases were followed with reference to an arbitration under this section in *Warburton v. Haslingden Local Board*, 48 L. J. Q. B. 451; in which the previous decision in *Kellett v. Tranmere Local Board*, 34 L. J. Q. B. 87; 11 L. T. (N.S.) 457; 13 W. R. 209; 28 J. P. 742, was dissented from. It would appear, therefore, that, notwithstanding the provisions in the text, the time for making the award may be extended beyond the period of two months, as in *Ward v. Secretary of State for War*, 32 L. J. Q. B. 53; or even after the award has been made after the two months has elapsed, as in *Lord v. Lee*, L. R. 3 Q. B. 404; *Re Warner and Powell*, L. R. 3 Eq. 261; *May v. Harcourt*, 13 Q. B. D. 688; and similar cases. But in *Mackenzie and the Ascot Gas Company*, 17 Q. B. D. 114; 55 L. J. Q. B. 309; 34 W. R. 487, it was held that the court cannot enlarge the time for making an award under the above section beyond the period of two months limited by the section. It is to be observed that in this case the decision in *Warburton v. Haslingden Local Board* was not cited, and it remains to be decided whether section 9 of the Arbitration Act, 1889, now makes a difference.

(l) Compare 8 and 9 Vict. c. 18, s. 33, and see the notes in that section in the Appendix, *post*.

(m) According to *Caledonian Railway Company v. Lockhart*, 6 Jur. (N.S.) 1311; 3 Macq. 808; 3 L. T. (N.S.) 252; 8 W. R. 373, the arbitrator may employ an expert, and may, if he deem it necessary, consult men of science. He cannot, however, delegate his authority. See *Eastern Counties Railway v. Eastern Union Railway Company*, 3 De G. J. & S. 610.

As to the damages which may be awarded, see section 308, *post*.

The arbitrator may be called as a witness in any proceedings to enforce his award, and can be required to state what passed before him, and what was submitted for his consideration, but he cannot be asked what passed in his own mind when he formed his decision. *Buccluch (Duke of) v. Metropolitan Board of Works*, L. R. 5 H. L. 418; 41 L. J. Ex. 137; 27 L. T. (N.S.) 1; 36 J. P. 724.

(n) See for the definition of an oath, 52 & 53 Vict. c. 63, s. 3.

(o) An arbitrator or umpire acting under this section must in his award deal with the costs of and consequent upon the references which are placed in his discretion by the text, and if he fails to do so the court will remit the award to him for the purpose of determining the question of costs. *Peake v. Finchley Local Board*, 57 L. T. (N.S.) 882; W. N. (1887), 203.

The Court of Queen's Bench decided that an action could not be brought for the amount of costs awarded by the arbitrator until they had been taxed. But this decision was reversed by the Exchequer Chamber in error. *Holdsworth v. Barsham*,

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supra; *Metropolitan Railway Company v. Sharpe*, 5 App. Cas. 425; 50 L. J. Q. B. 14; 43 L. T. (N.S.) 130; 28 W. R. 617; 44 J. P. 716.

The costs of an arbitration under this Act are not within the third-party clauses of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38, which applies only to the taxation of costs as between solicitor and client, and not to party and party costs. It is not open to the party liable to elect to pay such costs as between solicitor and client, inasmuch as the results of that mode of taxation may be adverse to the solicitor whose bill is taxed. *In re Cowdell*, 52 L. J. Ch. 246; 31 W. R. 335.

The court has no power, however, to compel an arbitrator to submit his costs—i.e., the fees payable to him—to arbitration. The proper remedy for the extortionate charges of an arbitrator is (1) to apply to have his award set aside; or (2) to bring an action for the recovery of a portion of the charge; or (3) to call upon the court to compel him to make his award. *Withington v. Wrexham Waterworks Company*, 32 W. R. 1000. It was held by WILLS, J., that no custom exists by which surveyors engaged in compensation cases on the compulsory purchase of land are entitled to be remunerated on a percentage of the sum awarded according to *Ryde's scale*. *Debenham v. King's College, Cambridge*, 1 C. & E. 438. When an award under this Act has been made a rule of court in the Chancery Division, a special order to tax the costs is not necessary. *Re an arbitration between Clark and the Corporation of Bath*, W. N. (1884), p. 127. When an award of compensation is made under this section, it cannot, though duly made a rule of court, be enforced by motion in the manner in which awards are usually enforced. The reason is that the award determines amount only, and not liability; and the local authority have, therefore, the right to compel the claimant to bring an action on his award to determine the question of liability. *Re an arbitration between Walker and the Beckenham Local Board*, 50 L. T. (N.S.) 206; 48 J. P. 264. And see *Helmere v. East Ham Local Board*, "Times," 13th December, 1893, affirmed in C. A., 8th February, 1894. Two local authorities, whose districts were adjacent, agreed to carry out a joint sewerage scheme by an agreement, in which it was stipulated that all disputes as to the matters comprised therein should be settled by arbitration in the manner provided by this and the preceding section. An award having been given in an arbitration which arose out of the agreement, which awarded that one of the parties should pay to the other the costs of the reference and award, without stating the amount of such costs, upon motion for an order directing the taxation of the costs, it was held that as the submission to arbitration had been made a rule of court, the taxing master was bound to tax the costs upon the application of the successful parties, and that it was not obligatory on them to bring an action upon the award in order to do so. *Chesterfield (Corporation of) v. Brompton Local Board*, 50 J. P. 824.

(p) That is, of either division of the High Court. The court has the same jurisdiction with respect to such a rule as in ordinary cases. *In re Harper and Great Eastern Railway Company*, L. R. 20 Eq. 39; 44 L. J. Ch. 507.

The application to make the submission a rule of court should be made *ex parte*. *Wood v. Birch*, W. N. (1889), p. 126.

(q) This award is no longer exempt from stamp duty since the repeal of 35 & 36 Vict. c. 79, s. 42, now repealed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), but without reviving former enactments.

(r) These words are somewhat more emphatic than those used in 8 & 9 Vict. c. 18, ss. 25, 27, 37, but the effect appears to be the same. An award under that Act may be set aside on motion made within the time limited by the statute 9 & 10 Will. 3, c. 15, for setting aside an award under that Act. *In re Harper and the Great Eastern Railway Company, supra*. In the same case it was held that though in form the umpire had no power to order payment of the amount awarded, it did not vitiate the award. As to the time within which a motion to set aside an award must now be made, see R. S. C., Order 64, rule 14, which provides that the application may be made at any time before the last day of the sittings next after such award has been made and published to the parties. This rule was introduced in consequence of the decision in *Christ's Hospital, Brecknock, v. Martin*, 3 Q. B. D. 16; 46 L. J. Q. B. 591; 36 T. L. (N.S.) 537; 25 W. R. 637. Notice of motion given before the last day of the sittings is a sufficient commencement of an application within the rule. *Re Gallop and Central Queensland Meat Export Company*, 25 Q. B. D. 230; 59 L. J. Q. B. 460; 62 L. T. (N.S.) 834; 38 W. R. 621.

Under rule 7 of the same order the court can extend the time for moving to set aside the award although the time limited by rule 14 has expired. *Re Oliver and Scott's Arbitration*, 43 Ch. D. 310; 59 L. J. C. H. 148; 61 L. T. (N.S.) 552; 38 W. R. 476.

**Note to
Section 180.**

A question as to the power to set aside an award under this Act was raised but not decided in *Burgess v. Northwich Local Board*, ante, p. 250.

The award is only binding on the parties to the reference. As to this see *Tunbridge Local Board v. Ackroyd*, ante, p. 195.

Claims under twenty pounds may be referred to court of summary jurisdiction.

181. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party (a) before a court of summary jurisdiction, (b) but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

(a) See, however, section 22, ante, p. 53, where the local authority are not allowed to exercise such an option, the power being confined to the other party when the dispute is as to the use of a sewer by an owner or occupier without the district.

(b) See the definition, ante, p. 22.

(c) Under the H. Improvement Act, which incorporated the Lands Clauses Act, power was given to the corporation to lay sewers in lands, making full compensation for any damage. And where the method of recovering compensation was not provided, two justices might hear and determine the same. It was held that, though nothing was said about costs, full compensation naturally included the costs of applying to the justices. *Huddersfield (Mayor of) v. Shaw*, 54 J. P. 724.

BYE-LAWS.

Authentica-
tion and
alteration
of bye-laws.

182. All bye-laws made by a local authority under and for the purposes of this Act (a) shall be under their common seal; (b) and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act. (c)

(a) Bye-laws are made under sections 44, 80, 90, 113, 141, 157, 164, 167, 169, 171, 172, 314 of this Act; under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), s. 2; the Public Health (Fruit Pickers) Act, 1882 (45 & 46 Vict. c. 23), s. 2; and under several of the statutes incorporated by this Act, e.g., the Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 68, 69; Baths and Washhouses Acts, 9 & 10 Vict. c. 74, s. 34, and 41 & 42 Vict. c. 14, s. 6; the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 128; the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 42; the 24 & 25 Vict. c. 61, s. 21, re-enacted in Schedule V.; the Housing of the Working Classes Act, 1890, s. 62; the Public Health Acts Amendment Act, 1890, ss. 13, 20, 23, 26, 38, 44, &c. And see the Contagious Diseases (Animals) Act, 1886, s. 9, post.

(b) It will be remembered that all local authorities are now incorporated, and consequently have a common seal. No signature of the members is required, but the affixing of the common seal should be attested by the clerk or a member of the board, and should be done in pursuance of a resolution entered on the minutes.

(c) See section 315, post, which repeals previous inconsistent bye-laws, and section 326, post, which continues all bye-laws previously duly made under any of the Sanitary Acts.

Some important observations on this proviso will be found in the circular letter on model bye-laws addressed to sanitary authorities by the Local Government Board on the 25th July, 1877.

The local authority have no general power to make bye-laws independently of this Act in respect of its purposes. *Reg. v. Wood*, 5 E. & B. 49; 3 C. L. R. 1134; S. C.

sub. nom. Reg. v. Rose, 1 Jur. (N.S.) 802 ; 24 L. J. M. C. 130 ; 19 J. P. 676, and see *Byrne v. Brown*, 57 J. P. 741.

**Note to
Section 182.**
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For a discussion of the general grounds upon which a bye-law will be held void as unreasonable, see *Slattery v. Naylor*, 13 App. Cas. 446 ; 57 L. J. P. C. 73 ; 59 L. T. (N.S.) 41 ; 36 W. R. 897.

183. Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence *(a)* a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority ; but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty. *(b)*

Power to
impose penal-
ties on
breach of
bye-laws.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

This and the three following sections have been applied to bye-laws made by a parish council under section 8 (1) *(d)* of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

(a) For examples of continuing offences in the case of buildings, see section 158, *ante*, p. 217. It does not appear when notice of the offence can be given, but probably such notice cannot be given until after conviction.

(b) It is considered that the authority should fix the precise penalty for the breach of the bye-law, limited by the amount in the text, providing, however, that the same may be reduced by the justices or court in which it is sued for.

As to the recovery of this penalty, see section 251, *post*.

184. Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper ; *(a)* nor shall any such bye-laws be confirmed—

Confirmation
of bye-laws.

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application ; *(b)* and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward. *(c)*

The clerk of the local authority shall, on the application of any such ratepayer, *(d)* furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy. *(e)*

A bye-law required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority. *(f)*

This section has been applied not only as stated in the notes to section 183, *supra*, but also to bye-laws made under sections 2, 22, and 25 of the Prevention of Cruelty to Children Act, 1894 (56 & 57 Vict. c. 41).

**Note to
Section 184.**

(a) See the circular letter of the Local Government Board referred to in note (c) to section 182, *ante*, p. 256.

The Local Government Board give full consideration to the *legality* as well as the *policy* of the bye-laws, so as to satisfy themselves on both points; but, of course, they cannot guarantee the former.

(b) This refers to the application for confirmation and not to the sending of a draft of the proposed bye-laws for perusal.

(c) These provisions will enable any person to apply to the Local Government Board with the view of preventing the confirmation of any bye-law.

(d) It is presumed that any person who is actually rated to the current rate would be a *ratepayer* within the meaning of this section, and that the definition in Schedule II., Rule 11, *post*, is not applicable. But whether persons occupying rateable property who are not actually rated would be within the section is doubtful.

(e) The neglect of this regulation would not it seems invalidate the bye-laws.

(f) The confirmation by the Local Government Board, however, gives no validity to a bye-law not warranted by the provisions of the Act. *Reg. v. Wood, ante*, p. 256. Many bye-laws confirmed under the previous Acts have been held by the courts of law to be invalid. The Local Government Board in their letter of confirmation warn the authorities as to this result. The cases in which bye-laws have been held invalid will be found under the several sections by virtue of which bye-laws have been made.

As to the confirmation of certain bye-laws made under Acts incorporated with this Act (10 & 11 Vict. c. 34, s. 128; 10 & 11 Vict. c. 89, ss. 68, 69; 10 & 11 Vict. c. 14, s. 42), see the Public Health (Confirmation of Bye-laws) Act, 1884 (47 Vict. c. 12), *post*.

Bye-laws to
be printed,
&c.

185. All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; (a) and a copy thereof shall be delivered to any ratepayer (b) of the district to which such bye-laws relate, on his application for the same; a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer (b) of the parish at all reasonable hours.

(a) See in section 306, *post*, the penalty upon any person who destroys or defaces any board on which a bye-law is affixed.

Bye-laws made under section 167, *ante*, p. 232, must also be published as that section directs.

By a local Act passed in 1847, commissioners were empowered to make bye-laws which were to be published by being printed and a copy delivered to every person applying for the same, and by painting or placing on boards to be hung up on the front of the office of the commissioners, and also on some conspicuous part of the works or locality to which the same related. Under the Public Health Act, 1848 (11 & 12 Vict. c. 63), ss. 115, 116, the prescribed mode of publication is the same as that in the text. It was held that a publication in the manner prescribed by the last-mentioned Act was sufficient. *Fielding v. Rhyl Improvement Commissioners*, 3 C. P. D. 272; 38 L. T. (N.S.) 223; 26 W. R. 881; 42 J. P. 311.

(b) See note (d) to the last section. It will be observed that for copies of the proposed bye-laws a payment is to be made, but not so in regard to the bye-laws when made.

Evidence of
bye-laws.

186. A copy of any bye-laws made under this Act by a local authority (not being the council of a borough), (a) signed and certified by the clerk of such authority (b) to be a true copy (c) and to have been duly confirmed, shall be evidence until the contrary is proved in all legal

proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof. Section 186.

(a) This exception was made because 36 & 37 Vict. c. 33, s. 2, provided for the *prima facie* evidence of bye-laws made by a town council. That Act is repealed, but its provisions as to evidence of bye-laws are re-enacted by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 24, which provides that the production of a written copy of a bye-law made under that Act, or any former, or present, or future, general or local Act, if authenticated by the corporate seal, shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy of the bye-law, having been approved or confirmed by the authority whose confirmation or approval is required to the making or before the enforcing of the bye-law.

(b) Proof will be required of the clerk's signature.

(c) In *Drew v. Harlow*, 39 J. P. 420, the production of a printed copy of the bye-laws of a town council, not authenticated by the common seal of the borough, though bearing the borough arms and a certificate of approval and confirmation, was held to be insufficient proof of the bye-laws, under section 2 of the Municipal Corporations Evidence Act, 1873, which required that such copy should be authenticated by the common seal of the borough.

187. Bye-laws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act. Bye-laws made under section 90 of 5 & 6 Will. 4, c. 76, to be submitted to Local Government Board.

5 & 6 Will. 4, c. 76, is repealed by the Municipal Corporations Act, 1882, section 23 of which provides as follows:—The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case 5*l.*, as they deem necessary for the prevention and suppression of offences against the same Nothing in this section shall interfere with the operation of section 187 of the Public Health Act, 1875, and that section shall have effect as if this section were therein referred to instead of section 90 of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, or with respect to prevention or suppression of nuisances. By section 260 of the same Act bye-laws in force on the 31st December, 1881, continue in force notwithstanding the passing of the Act. Several recent decisions have been given with reference to bye-laws made under this enactment for the regulation or prohibition of music in streets. See *Reg. v. Gay and Powell*, 51 L. T. (N.S.) 92; 48 J. P. 740; *Beatty v. Glenister*, 51 L. T. (N.S.) 304; *Johnson v. Croydon (Mayor of)*, 16 Q. B. D. 709; 55 L. J. M. C. 117; 54 L. T. (N.S.) 295; 50 J. P. 487; *Munro v. Watson*, 51 J. P. 660; 57 L. T. (N.S.) 366; W. N. (1887), p. 60; *Macdonald v. Lochrane*, 51 J. P. 629; *Booth v. Howell*, 53 J. P. 678; 5 T. L. R. 449.

188. The provisions of this Act relating to bye-laws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit. As to regulations of local authority.

Regulations are made under sections 125, 143, 189; also under some of the amending Acts, such as the Public Health Acts Amendment Act, 1890, ss. 20, 40, &c.

OFFICERS AND CONDUCT OF BUSINESS OF LOCAL AUTHORITIES.

Section 189.

Officers of Local Authorities.

Appointment
of officers
of urban
authority.

189. Every urban authority shall^(a) from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer :^(b) Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act,^(c) and may make regulations^(d) with respect to the duties and conduct of the officers and servants so appointed or employed.

Subject in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act,^(e) the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances,^(f) as the urban authority may think proper ;^(g) and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure.^(h)

(a) This word is peremptory. It is imperative upon the urban authority to make these appointments. There is some ambiguity in the section. It appears to recognise that the urban authority has some special existence as such, distinct from its normal character and capacity as the council of a borough, &c. But section 6 (*ante*, p. 24), only superadds certain functions under this Act to those which the body already possessed (see note on section 198, *post*, p. 271). It appears, therefore, that the officers of such body should discharge the requisite services rendered necessary by this Act, though by reason of the additional duties they may be entitled to additional remuneration. Separate appointments are prohibited, and it seems to be irrational that one person should hold two offices under the same body to do what are the same or analogous duties.

It will be observed that the section only provides for one person being appointed ; under the next section there may be several.

(b) The appointment of these officers appears to be complete by election, and no document in writing is required, but there should be a minute. See *Smart v. West Ham Union (Guardians of)*, 10 Ex. 867 ; 3 C. L. R. 696 ; 25 L. J. Ex. 210 ; 26 L. T. (o.s.) 285 ; 20 J. P. 596 ; *Reg. v. Greene*, 17 Q. B. 793 ; 21 L. J. M. C. 137 ; 16 J. P. 183 ; *Roberts v. Drewitt*, 18 C. B. (n.s.) 48. The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 149, required all consents, sanctions, approvals, or authorities of the local board to be in writing, and under their seal and the hands of five or more of them. It was held that this did not mean that every act of the local board should be under their hands and seals, and, therefore, that the appointments of clerk and surveyor to the board need not be so under their hands and seals. *Smith v. Hirst*, 23 L. T. (n.s.) 665 ; 35 J. P. 247. But if the officer of the board seek to raise any question as to the breach of the engagement in any civil court, the proceeding will fail if there be no contract under seal, if the appointment is worth 50*l.* *Dyde v. St. Pancras (Guardians of)*, *Austin v. Bethnal Green (Guardians of)* *ante*, p. 239. Reference may be made to a case decided under the Elementary Education Act, 1870. *Scott v. Clifton School Board*, 14 Q. B. D. 500 ; 52 L. T. (n.s.) 105 ; 33 W. R. 368 ; 1 C. & E. 435. Under that Act the appointment of an officer may be made by a signed minute, and such appointment is to be as valid as if made under seal. It was held that an architect appointed by minute only could recover for his services, though he had no appointment under seal.

In section 191, *post*, p. 263, provision is made as to the mode of appointment of the medical officer.

Under 11 & 12 Vict. c. 63, the appointment was exempt from stamp duty by reason of section 151. On the repeal of that Act the stamp exemption ceased to exist, but by 38 & 39 Vict. c. 23, s. 14, the stamp duties charged under the Stamp Act, 1870 (33 & 34 Vict. c. 97), in respect of the appointment to an office or employment ceased to be payable, and are not reimposed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), although section 14 of 38 & 39 Vict. c. 23, has been repealed by the Statute Law Revision Act, 1883.

Proof of the appointment of the officer, where express proof is required, may be supplied by the production of the minutes of the Board containing an entry of the appointment.

In *Smith v. Hirst*, *supra*, it was held that the title of persons acting as such officers cannot be questioned by third persons.

The duty of appointing a medical officer of health may be satisfied by an arrangement with the county council for the rendering available of the services of the county medical officer. See the Local Government Act, 1888, s. 17, *post*.

(c) This statute does not require any particular qualification for any of these officers, except the medical officer, as to whom see next section, but generally it is found most appropriate to select a solicitor for the clerk, and an engineer or professional surveyor for the surveyor. As to the duties of the surveyor in proceedings to stop up or divert a highway under 5 & 6 Will. 4, c. 50, ss. 84, 85, see *United Land Company v. Tottenham Local Board*, *ante*, p. 164.

(d) The previous Act, 11 & 12 Vict. c. 63, s. 37, provided that the local board might make bye-laws in this respect (*Ex parte Richards*, *infra*) which bye-laws required confirmation and other formalities. This is changed, and the sanitary authority are only required to make *regulations*, which, as seen above (section 188), do not require confirmation.

When an appointment is made and the part of the salary is paid by the county council under the Local Government Act, 1888, s. 24, the Local Government Board prescribe the duties to be discharged by the officer. They may also prescribe the duties of a medical officer of health in all cases. See section 191, *post*, p. 263.

With reference to the duties of the clerk of the local authority, several cases may be mentioned. The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 138, provided that certain local boards might be sued in the name of the clerk. 29 & 30 Vict. c. 90, s. 46, however, incorporated such boards. Hence, when a suit in equity was brought against the clerk in his official capacity, a demurrer was allowed on the ground of want of equity, but leave to amend was granted, the clerk's name being retained, as he was required to answer in his official capacity. *Deeks v. Bailey*, 21 L. T. (N.S.) 581.

A clerk to the local board who was also collector of rates, having engaged the plaintiffs, a firm of law stationers, to assist him in copying the valuation list in the rate book, and also in copying the rate accounts, and having absconded, the plaintiff sued the local board in the Salford Hundred Court, for the amount due for such copying. It was held that the plaintiffs were rightly nonsuited, on the ground that there was no evidence that the clerk had authority to incur the debt for the local board. *Meredith v. Radcliffe Local Board*, 43 J. P. 819.

When a solicitor had been appointed clerk to a local board with a salary, for conducting the legal as well as the ordinary business of the board, it was held by BACON, V.C., upon an interlocutory motion in an action for *mandamus* to compel production of papers, that whatever claim the clerk might have against the board for payment of costs in respect of professional services, he had no right, being in the relation of a servant to the board, to refuse production of the legal papers or other documents claimed by the board as belonging to them. It was held, however, by the Court of Appeal, that as such an order would prejudice the clerk's lien, it could not be made before the trial of the action without payment into court of a sum sufficient to meet the amount claimed by the clerk, upon which he was to have the same lien as upon the papers; and the court ordered that upon that being done the clerk should deliver up to the plaintiffs all books and papers claimed in the action. *Newington Local Board v. Eldridge*, 12 Ch. D. 349.

It would appear that if in the course of legal proceedings a local board are ordered to answer interrogatories by their clerk, he cannot claim any privilege on the ground that he is acting as solicitor of the board. *Swansea (Mayor of) v.*

Note to *Quirk*, 5 C. P. D. 106; 49 L. J. C. P. 157; 41 L. T. (N.S.) 758; 28 W. R. 371; 44 Section 189. J. P. 378.

(e) See section 191, *post*, p. 263.

(f) As to what is meant by "allowances," see the notes to section 193, *post*.

(g) With regard to the recovery of their salaries by officers of the local board, it has been generally considered that the only remedy was a writ of *mandamus* directed to the board to levy a rate, or an action on the case against the treasurer or other officer, alleging that he had funds to pay the salary, but had neglected or refused to pay the same. It had been held that no action would lie against the board directly for the salary. See *Bogg v. Pearce*, 10 C. B. 534; 20 L. J. C. P. 99; 16 L. T. (o.s.) 462; 2 L. M. & P. 21; *Addison v. Preston*, 12 C. B. 108; 21 L. J. C. P. 146; 19 L. T. (o.s.) 184; 16 Jur. 643; *Smart v. West Ham Union (Guardians of)*, *supra*; *Cane v. Chapman*, 5 A. & E. 647. Probably these principles do not apply where there is a contract under seal providing for the payment of a salary. And in *Hall v. Taylor*, E. B. & E. 107; 27 L. J. Q. B. 331; 31 L. T. (o.s.) 151; 23 J. P. 20, it was held that when a local board is empowered to pay a salary out of the rates leviable by them, an action of debt for the amount might be maintained by the officer against the board. From the judgment in that case it would appear that some of the previous cases, such as *Bogg v. Pearce*, have no application to a local board which is a corporation. But in any case in which judgment is obtained against the board, it can seldom be enforced otherwise than by *mandamus*.

It is to be observed that a claim for a writ of *mandamus* cannot be sustained if there is any other effectual remedy. In an action by executors against the clerk of commissioners under a local Act, in which the plaintiffs claimed a writ of *mandamus* under section 68 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), the declaration stated that the commissioners were indebted to the testator for the agreed salary payable by them to him for services rendered by him as clerk to the commissioners, and also for other work by him as the attorney of and otherwise for the commissioners in and about their business. The declaration then alleged that the said debts became and were a charge on any moneys which might be in the hands of the commissioners, and which should have been collected by them under and by virtue of the said Act; and if the commissioners should not have in their hands any moneys sufficient to pay the said debts, then such debts became a charge and were chargeable on a rate leviable and to be levied under the Act. The defendants pleaded, to so much of the debt as became due on simple contract, the Statute of Limitations, and to the debts except as to the agreed salary, that no signed bill had been delivered, also that the commissioners had no funds whereout they could pay the said debts:—Held, first, that the declaration was bad, inasmuch as, assuming that the services in respect of which the agreed salary was claimed were payable out of the rates, the others might be services for which the commissioners were personally liable, and, consequently, the remedy was by action and not by a claim of *mandamus*; secondly, that on the same principle the two first pleas were good; and *semble*, that the last plea was also good. *Bush v. Beavan*, 1 H. & C. 500; 32 L. J. Ex. 54; 7 L. T. (N.S.) 106; 10 W. R. 845. It was subsequently held that it was not necessary for the clerk to deliver a signed bill, and that a report of a committee in which the debt due to the clerk was scheduled as a liability did not take the case out of the Statutes of Limitations. *Bush v. Martin*, 2 H. & C. 311; 33 L. J. Ex. 17; 8 L. T. (N.S.) 509; 11 W. R. 1078; 27 J. P. 825.

It appears that when an officer performs, at the request of the local board, services of a kind different from those which he is bound to fulfil as such officer, there is no objection to his being paid a gratuity for so doing in addition to his salary. See *Reg. v. Gloucester (Mayor of)*, 23 J. P. 709. But see *Reg. v. Ramsgate (Mayor, &c., of)*, cited in the notes in section 193, *post*.

(h) In consequence of this provision the court refused to grant a rule for a *quo warranto* information, applied for by the former holder of the office of clerk to a local authority, on the ground that the dismissal from office had been illegal, for if he had been reinstated he might legally be dismissed immediately. *Semble*, that a resolution of a local board dismissing an officer is not a resolution rescinding the resolution by which he was appointed within the meaning of a bye-law with respect to the rescission of resolutions of a local board (*R. v. Wrexham Turnpike Roads (Trustees of)*, *dis-sented from*); *Ex parte Richards*, 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. (N.S.) 684; 26 W. R. 695; *S. C. Reg. v. Jones*, 42 J. P. 614. See, to the same effect, *Ex parte Parry*, 3 T. L. R. 649; *Reg. v. Carroll*, 22 L. R. Ir. 400; *Reg. v. Whelan*, 20

L. R. Ir. 461. But see, on the other hand, *Reg. v. Burrows* [1892], 1 Q. B. 399; 61 L. J. Q. B. 88; 66 L. T. (N.S.) 25; 40 W. R. 207.

Note to
Section 189.

Possibly the power to dismiss at pleasure may be provided against by express contract; but such contract must be under seal. See note on section 174, *ante*, p. 239.

As to the power of the board to dismiss without notice and without assigning reasons when there is no express contract, see *Reg. v. Darlington School*, 6 Q. B. 682; *In re Feather*, 19 L. J. M. C. 70.

190. Every rural authority shall(a) from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

Appointment
of officers
of rural
authority.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties(b) of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid.

(a) This is imperative upon the rural sanitary authority. Although the guardians and the rural district council are no longer the same body, this section remains unrepealed, and it contemplates that the clerk and treasurer of the union, if willing to act, shall also be clerk and treasurer of the rural district council.

The rural authority may satisfy the requirements of this section as to medical officers by arranging with the county council for the services of the county medical officers. See the Local Government Act, 1888, s. 17, *post*.

(b) These duties will be mainly the attendance on the sanitary committees and the making out and keeping of accounts.

191. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner;(a) and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament,(b) and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.(c)

As to medical
officer of
health, &c.

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities(d) of such districts; and the Local Government Board shall by order(e) prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said Board may prescribe, be appointed a medical officer of health;(f) and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.(g)

In case of illness or incapacity(h) of the medical officer of health a

Section 191. local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

(a) That is, a person duly registered under 21 & 22 Vict. c. 90 ; 49 & 50 Vict. c. 48.

(b) The Local Government Act, 1888, s. 24, provides for payments by county councils in substitution for annual local grants theretofore made out of the Exchequer in aid of local rates. It enacts that in substitution for local grants, the council of each county shall from time to time pay out of the county fund and charge to the Exchequer Contribution Account certain sums, including, among others, half the cost to each local authority of the salary of the medical officer of health and inspector of nuisances where the qualification, &c., of such officer is in accordance with the regulations made by the Local Government Board under the above section. The same section provides that a reference in section 189 (*ante*, p. 260), and in the above section, to officers any portion of whose salary is paid out of moneys provided by Parliament, shall be construed to refer to those officers in respect of whose salaries payment is made by a county council. See the section *in extenso*, *post*. The regulations of the Local Government Board as to the qualification, &c., of officers, part of whose salary was paid by Government and is now paid by the county council, will be found in "Glen's Local Government Orders," and in Orders dated 23rd March, 1891, the text of which is set out in 55 J. P. 234, 250 ; and St. R. & O. (1891), at pp. 527, 539.

(c) The Local Government Act, 1888, s. 18, *post*, now prescribes the qualification of a medical officer of health.

(d) These words include each class of authorities, urban and rural.

(e) See section 205, *post*. The board have already framed and issued several orders under this section.

(f) It must be carefully noticed that this appointment cannot be made absolutely. The Local Government Board must give their sanction. They will require to be satisfied not only as to the capacity of the individual to execute the duties, but that he can do so without detriment to the discharge of his other official duties. A minute of the Board with reference to these joint appointments has been issued.

(g) Note that the medical officer of health has no definite powers. The orders of the Local Government Board referred to above prescribe his duties, and some powers are incidentally given to him in this Act, but this paragraph confers upon him the powers of an inspector of nuisances.

(h) Perhaps this word will cover the necessary or unavoidable absence of the officer.

Offices tenable
by same
persons.

192. The same person may be both surveyor and inspector of nuisances ; but neither the person holding the office of treasurer nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk ; (a) and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer.

Any person offending against this enactment shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt. (b)

(a) The object of this prohibition, which is common in local Acts, appears to be to prevent the clerk, who represents the board, from holding their money, and thus to create a check upon the two officers. The clerk cannot deal with the money of the board, because he does not hold it, and the treasurer must hold it, until the clerk, under the direction of the board, gives him authority to pay it away.

Where a local Act provided that a corporation should not appoint as treasurer the person who was appointed clerk, and a penalty was imposed on any person, being the clerk or his partner or clerk, who should in any manner officiate for the treasurer, it was held that the corporation were prohibited from appointing the clerk to such

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Section 192.

officer as *assistant* treasurer ; but where the corporation had so appointed the clerk, and he had discharged some of the duties of the treasurer, it was held that it was a question for the jury whether he did so *bonâ fide* and in the belief that he was legally appointed by them as an independent officer, or colourably and in evasion of the Act ; and that, in the former case, he would not be liable to the penalty, but in the latter he would. *Hawkins v. Newman*, 4 M. & W. 213 ; 8 L. J. Ex. 82. The words of the section render a similar evasion of this Act impracticable.

(b) The consent of the Attorney-General under section 253 is not necessary in order to maintain such an action. Per BRAMWELL, L.J., in *Fletcher v. Hudson*, 5 Ex. D. 287 ; 49 L. J. Ex. 793 ; 43 L. T. (N.S.) 404 ; 45 J. P. 5.

193. Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested, in any bargain or contract(a) made with such authority for any of the purposes of this Act. Officers not to contract with local authority.

If any such officer or servant is so concerned or interested, or, under colour of his office or employment, exacts or accepts any fee or reward whatsoever other than his proper salary, wages, and allowances,(b) he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person,(c) with full costs of suit, by action of debt.

(a) This provision has been modified by the Public Health (Members and Officers) Act, 1885 (48 & 49 Vict. c. 53), s. 2, which provides that it shall not be unlawful for any officer or servant appointed or employed under this Act or a local Act by the local authority to be concerned or interested in any contract with the local authority, made with such consent or approval as is hereinafter mentioned, for the sale, purchase, leasing or hiring of any lands, rooms, or offices, or to be concerned or interested in any contract with the local authority as a shareholder in any joint stock company, and no officer or servant of a local authority shall be incapable of holding any office or of being employed under this or the local Act, or be liable to any penalty by reason only of his having been concerned or interested either before or after the passing of that Act in any such contract as aforesaid. No such contract as aforesaid is to be made or approved if made before the passing of that Act (6th August, 1885) for the sale, purchase, leasing or hiring of any land, rooms, or offices, except with the consent of two-thirds of the number of the members of the local authority present at a meeting held after seven clear days' notice shall have been published in some newspaper circulating in the neighbourhood, and after notice shall have been sent in writing to every member stating the nature of the contract, and the time and place of the meeting at which the question is to be considered. See this section and the notes thereon, *post*.

Note that a contract made contrary to the provisions of this section is void, and cannot be enforced. *Melliss v. Shirley Local Board*, 16 Q. B. D. 446 ; 55 L. J. Q. B. 143 ; 53 L. T. (N.S.) 810 ; 34 W. R. 187 ; 50 J. P. 214. But *semble*, that if after the making of a contract with a local authority, an officer of the authority became interested in it, this section would not avoid the contract.

See further, as to the interest in a contract which may disqualify, the cases cited in the notes to section 46 of the Local Government Act, 1894, *post*.

(b) This provision is intended to apply to fees from other persons than the local authority, and is levelled at the practice of demanding fees from persons seeking aid from the board, or exposed to proceedings by them. But the language is sufficiently general to prevent the officer receiving gratuities for extra services rendered to the board. The case of *Ex parte Mellis*, 8 L. T. (N.S.) 47, shows that gratuities to officers paid out of the rates are not lawful, and may be disallowed at the audit. Guardians may, however, in certain cases, grant additional remuneration for extraordinary services. See section 190, note (b), *ante*, p. 263, and see *Reg. v. Gloucester (Mayor of)*, *ante*, p. 262.

It is to be observed that the statute applies to demands made *under colour of the office*, and therefore not to claims when the officer acts and makes a demand for services which he renders independently of his office. Thus the clerk may charge

Note to Section 193. professionally for contracts prepared for contractors, if they think proper to employ him, and he can do so without injury to the board. Perhaps, also, the surveyor may not be prevented from acting professionally for persons within the district, but such conduct may lead to a mischievous result.

By the terms of contracts entered into with a local authority for the purpose of the Act, the surveyor to the local authority was to receive from the contractors, in respect of bills of quantities to be prepared by them, percentages on the amounts he should certify to be due to such contractors respectively by the local authority. It was held (affirming the decision of *MATHEW, J.*) that in respect of each contract the surveyor was liable to a penalty as having been "concerned or interested" therein within the meaning of the section. A local authority employed their surveyor, apart from his ordinary duties, to superintend the construction of certain drainage works as their engineer, and agreed to remunerate him by a percentage on the outlay. It was held that the surveyor was liable to the penalty imposed by this section. *Whiteley v. Barley*, 21 Q. B. D. 154; 54 L. J. Q. B. 643; 36 W. R. 823; 52 J. P. 595.

A municipal corporation having adopted a drainage scheme, which had been drawn up by their surveyor, resolved that he should superintend the works, and that he should be paid at a certain rate on the cost of the work, the whole remuneration not to exceed a fixed sum. Proceedings having been instituted against the surveyor to recover penalties under the Act, on the ground that he was interested in the contract within the meaning of that section, the corporation resolved to contribute the sum of 300*l.* towards his legal expenses. Certain penalties having been recovered against the surveyor, a rule was obtained for a writ of *certiorari* to bring up the order of the corporation settling the remuneration of the surveyor, and the order for the payment of the sum of 300*l.* in order that they might be quashed on the ground that they were illegal and *ultra vires*, and that the corporation had no power to make them. This rule was made absolute, and the court further ordered that "the prosecutors (the mayor, aldermen, and burgesses) do pay the costs of and occasioned by the application." The court was now asked to make an order that certain members of the corporation should personally pay the costs of and occasioned by the application for the writ of *certiorari*, the issuing thereof, and consequent thereon:—Held, that the members of the corporation who voted in favour of the resolution for carrying on the legal proceedings were personally liable for the costs occasioned thereby. *Reg. v. Whiteley*, 58 L. J. M. C. 164; 61 L. T. (N.S.) 253; 53 J. P. 420.

A local authority employed one of their officers, apart from his ordinary duties, to superintend the execution of certain works on their behalf, upon the terms that he should be paid for his services by a commission upon the contract price of such work, whereby he became "interested" in the contract for the works contrary to the provisions of section 193 of the Public Health Act, 1875. The officer duly superintended the execution of the works, and the local authority passed resolutions for the payment of, and paid him, the amount of the stipulated commission. On application for a *certiorari* to bring up such resolutions for the purpose of quashing them, it was admitted by the defendants that the payment was invalid, but it was contended that a fixed sum equal to the amount of the commission might have been lawfully paid to the officer as an "allowance" under section 189 of the Public Health Act, 1875, and that the invalidity of the payment being in form rather than in substance, the court in the exercise of their discretion ought to refuse the application:—Held, that the payment being illegal, the application must be granted. *Semble*, that the term "allowance" in section 189 does not include an allowance of money. *Reg. v. Ramsgate (Mayor, &c., of)*, 23 Q. B. D. 66; 58 L. J. Q. B. 352; 61 L. T. (N.S.) 333; 37 W. R. 781; 53 J. P. 740; 5 T. L. R. 434.

The council of a borough, being also the local sanitary authority under the Public Health Act, 1875, appointed the defendant, a solicitor and town clerk of the borough, to be clerk to the sanitary authority; and by a resolution of the council the defendant's salary was fixed at a certain sum, "to include all legal charges, except for contentious business matters, travelling expenses, and payments out of pocket." Subsequently the council, as local sanitary authority, promoted a sewage scheme, which had not been completed when the defendant's salary was fixed, and in connection with this scheme the defendant did work, partly in respect of contentious and partly in respect of non-contentious matters. On the completion of the sewage works the council passed a resolution that the defendant be paid a sum of money for his services in connection with the scheme, and the money was duly paid to and received by him:—Held, that the facts did not show an acceptance by the defendant under colour

of his office or employment of a fee or reward other than his proper salary, wages, and allowances, within the meaning of section 193 of the Public Health Act, 1875, and that he was not liable to the penalty imposed by the section. *Semble*, the word "allowances" in section 193 includes extra payments for extra work, and is not limited to allowances in respect of lodgings, coal, gas, and other like matters. *Edwards v. Salmon*, 23 Q. B. D. 531; 58 L. J. Q. B. 571; 38 W. R. 166; 54 J. P. 180.

A rule having been made absolute for a *certiorari* against a municipal corporation to bring up and quash certain orders made by the town council for illegal payments out of the borough funds:—Held, that members of the town council who had joined in making such orders were liable to be ordered, on a separate application against them, to pay the costs of the *certiorari*. *Reg. v. Vaile and Others*, 23 Q. B. D. 483; 54 J. P. 134.

(c) These proceedings cannot now be taken without the consent in writing of the Attorney-General: 47 & 48 Vict. c. 74, *post*. It would appear that the action must be brought within one year. 31 Eliz. c. 5, s. 5; *Dyer v. Best*, L. R. 1 Ex. 152; 35 L. J. Ex. 105; 12 Jur. (N.S.) 142; 13 L. T. (N.S.) 753; 14 W. R. 336; 4 H. & C. 189; 30 J. P. 151. In *Todd v. Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278, it was held that the period of limitation did not run from the time when the contract was made, the defendant having remained an officer of the board, and having been interested in the contract down to the commencement of the action.

In an action for penalties under this section the plaintiff is not entitled to administer interrogatories or to obtain discovery of documents. See *Whiteley v. Barley*, 56 L. J. Q. B. 312; and *Hunnings v. Williamson* (No. 1), 10 Q. B. D. 459; 52 L. J. Q. B. 273, 400; 48 L. T. (N.S.) 392, 581; 31 W. R. 924; 47 J. P. 390; *Martin v. Treacher*, 16 Q. B. D. 507; 55 L. J. Q. B. 209; 54 L. T. (N.S.) 7; 34 W. R. 315; 50 J. P. 356; *Jones v. Jones*, 22 Q. B. D. 425; 58 L. J. Q. B. 178; 60 L. T. (N.S.) 421; 37 W. R. 479; *Hobbs v. Hudson*, 25 Q. B. D. 232; 59 L. J. Q. B. 562; 63 L. T. (N.S.) 215; 38 W. R. 682; 54 J. P. 520; 6 T. L. R. 381; *Salford (Corporation of) v. Lever*, 24 Q. B. D. 695; 59 L. J. Q. B. 248; 62 L. T. (N.S.) 434; 54 J. P. 519; 6 T. L. R. 239; *Saunders v. Wiel* [1892], 2 Q. B. 331; 62 L. J. Q. B. 37; 67 L. T. 207; 40 W. R. 594, *post*.

194. Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof.

Officers intrusted with money to give security.

The local board must determine for themselves what securities they will deem sufficient. Generally the security given by collectors is a bond with two sureties. There are now several guarantee societies who will undertake to guarantee the fidelity of these officers; but there are usually many conditions imposed in their policies, the neglect of which invalidates the security, and the omission is seldom discovered until the security is attempted to be enforced. Moreover, they are generally determinable upon notice by the company, so that the security may fail at the time when the necessity for it becomes most urgent. 38 & 39 Vict. c. 64 (Government Officers Security Act, 1875), does not apply to these officers.

Section 151 of 11 & 12 Vict. c. 63, exempted the bond or security given on behalf of the officer from stamp duty, but was repealed by 35 & 36 Vict. c. 79, in respect thereof for the future.

If the services of the officer be rendered gratuitously and loss arises from the failure of a bank with which the officer lodged money belonging to the authority by the express direction of the authority, the officer will not be responsible. *Colchester Union (Guardians of) v. Moy*, 57 J. P. 265; 94 L. T. 388.

With regard to the terms of the condition, it should be made to be operative notwithstanding the change of tenure of the office, or alteration of the salary in amount or mode of payment, the change of district, or the imposition of new duties upon the officer by subsequent legislation, as these contingencies, if not provided against, may destroy the liability of the sureties. See *Bamford v. Iles*, 3 Ex. 380; 18 L. J. M. C. 49; 13 J. P. 652; *Holland v. Lea*, 9 Ex. 430; 2 C. L. R. 532; 23 L. J. Ex. 122; 18

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J. P. 201; *Frank v. Edwards*, 8 Ex. 214; 22 L. J. Ex. 42; *Birmingham (Mayor of) v. Wright*, 16 Q. B. 623; 15 Jur. 749; 20 L. J. Q. B. 214; *Worth v. Newton*, 10 Ex. 247; 2 C. L. R. 1471; 23 L. J. Ex. 338; 24 L. T. (o.s.) 157; *North Western Railway Company v. Whinray*, 10 Ex. 77; 23 L. J. Ex. 261; 2 C. L. R. 1207; *Oswald v. Berwick (Mayor of)*, 5 H. L. Cas. 856; 2 Jur. (n.s.) 743; 25 L. J. Q. B. 383; *Clifton Dartmouth Hardness (Mayor of) v. Selby*, 7 E. & B. 97; 3 Jur. (n.s.) 434; 26 L. J. Q. B. 20; *Pybus v. Gibb*, 6 E. & B. 902; 3 Jur. (n.s.) 315; 26 L. J. Q. B. 41; *Cambridge (Mayor of) v. Dennis*, E. B. & E. 660; 5 Jur. (n.s.) 265; *Portsea Island Union (Guardians of) v. Whillier*, 2 E. & E. 755; 6 Jur. (n.s.) 887; 29 L. J. Q. B. 150; 8 W. R. 493; 2 L. T. (n.s.) 211; 24 J. P. 678; *Skillet v. Fletcher*, L. R. 2 C. P. 469; 36 L. J. C. P. 206; 16 L. T. (n.s.) 426; 15 W. R. 876; 31 J. P. 452; *Malling Union (Guardians of) v. Graham*, L. R. 5 C. P. 201; 39 L. J. C. P. 74; 22 L. T. (n.s.) 789; 18 W. R. 674; *Holme v. Brunskill*, 3 Q. B. D. 495; 47 L. J. Q. B. 610; 38 L. T. (n.s.) 838; 42 J. P. 757.

It is beyond the scope of the present work to enter into any detailed examination of the law relating to the discharge of sureties; a few of the cases may, however, be referred to. It would appear that the omission of a local board to carry out the regulations prescribed by the following sections will not release the sureties; nor a statement of them which does not amount to a warranty. *Benham v. United, &c., Assurance Company*, 7 Ex. 744. As to the effect of an inaccurate representation of the sums to be collected, see *Towle v. National Guardian Assurance Company*, 3 Giff. 42; 30 L. J. Ch. 900, where it was held that a statement of the manner in which the accounts of the collector were to be checked, &c., did not amount to a warranty, and did not release the sureties in the event of its not being carried out. As to the effect of failure to give notice of former delinquencies of the officer, see *Lauder v. Simpson*, 21 W. R. 439; *Smith v. Bank of Scotland*, 1 Dow. 272.

It is a general principle that on a continuing guarantee for the honesty of a servant, if the master discovers that the servant has been guilty of dishonesty in the service, and instead of dismissing the servant chooses to continue him in his employment without the knowledge and consent of the surety, express or implied, he cannot afterwards have recourse to the surety to make good any loss which may arise from the dishonesty of the servant during the subsequent service. *Phillips v. Foxall*, L. R. 7 Q. B. 666; 41 L. J. Q. B. 293; 27 L. T. (n.s.) 231; 20 W. R. 900; 37 J. P. 37; *Saunders v. Aston*, L. R. 8 Ex. 73; 42 L. J. Ex. 64; 28 L. T. (n.s.) 35; 21 W. R. 293. See further *Halifax Union (Guardians of) v. Wheelwright*, L. R. 10 Ex. 183; 44 L. J. Ex. 121; 32 L. T. (n.s.) 802; 23 W. R. 704; 39 J. P. 823, as to the liability of a treasurer when the clerk of the authority committed frauds upon them.

As to the discharge of the sureties by the laches of the creditor, see *Wulff v. Jay*, L. R. 7 Q. B. 756; 41 L. J. Q. B. 322; 27 L. T. (n.s.) 118; 20 W. R. 1030; *Mansfield Union (Guardians of) v. Wright*, 9 Q. B. D. 683; 47 L. T. (n.s.) 62; 47 J. P. 228.

Mere laches of the obligee or a mere passive acquiescence by the obligee in acts which are contrary to the conditions of a bond, is not sufficient of itself to relieve the sureties. The plaintiffs sued the defendants as sureties on two bonds, the first given to the plaintiffs as urban sanitary authority to secure the due performance of the duties of a collector of general district rates, and the second given to the plaintiff as the corporation of a borough to secure the performance by the same person of his duties as collector and receiver of borough rates under the Municipal Corporations Act. The evidence showed that the plaintiff had acquiesced in an irregular mode of account on the part of the collector, but that the collector was never suspected of dishonesty until a year after the date of the second bond, when defalcations were discovered and he was dismissed. The jury in answer to questions put to them, found—first, that the plaintiffs had permitted their collector to retain moneys in his hands for a longer period than a week (which was contrary to section 195, *post*, and to a condition of the bonds and to a resolution passed by the plaintiffs before the bonds were given); and, secondly, that the plaintiffs had permitted him to mix the proceeds of the different rates. It was held that the plaintiff's acquiescence in the collector's irregular mode of accounting was not such connivance as to discharge the sureties; that upon the evidence there were no questions which the judge could have been properly required to leave to the jury other than those he did leave; and that on the facts proved at the trial and on the findings there was no defence to the action, and the plaintiffs were entitled to judgment. It was held also that on the construction of the second bond, in which the person guaranteed was described as collector and receiver, the sureties were liable for his breach of the condition to pay over moneys

received by him independently of any question as to the validity of the rate. *Durham (Mayor, &c., of) v. Fowler*, 22 Q. B. D. 394; 58 L. J. Q. B. 246; 60 L. T. (N.S.) 456; 53 J. P. 374; 5 T. L. R. 238.

As to the power of the sureties to put an end to their suretyship, see *Burgess v. Eve*, L. R. 10 Eq. 450; *Lloyds v. Harper*, 16 Ch. D. 290; 50 L. J. Ch. 140; 43 L. T. (N.S.) 481; 29 W. R. 452; *Beckett v. Addyman*, 9 Q. B. D. 783.

As to the effect of a stipulation in a bond by which the creditor undertook to prosecute the defaulting debtor, see *London Guarantee Company v. Fearnley*, 5 App. Cas. 911.

As to the effect of the lunacy of a collector, see *Grove v. Johnson*, 24 L. R. Ir. 352.

As to the admissibility in evidence of the collector's books in an action against his sureties, see *Abbeyleix Guardians v. Sutcliffe*, 26 L. R. Ir. 332.

**Note to
Section 194.**

195. Every officer and servant appointed or employed under this Act by a local authority^(a) shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how, and to whom, and for what purpose such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts.^(b)

Officers to
account.

And every such officer or servant employed in the collection of any rate made under this Act shall, within *seven days*^(c) after he had received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct,^(d) deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them.

^(a) Note the generality of these terms.

^(b) The requisition of course applies when the term of office has expired; but the local board will probably make some additional regulations for payments at other times. See the analogous provisions in the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 21.

^(c) This is a very precise direction, but one not very easy to be carried out universally. The local authority should, however, pay great attention to it. More confidence can be felt as to the due collection from a strict observance of the provision than from any amount or kind of guarantee. See *Durham (Mayor, &c., of) v. Fowler*, cited in the notes to the preceding section.

^(d) The local authority should require an account of the collection and deposit of the rates to be laid before them at short intervals. See section 250, *post*, as to the accounting of these officers to the auditor.

196. If any officer or servant appointed or employed under this Act by a local authority^(a)—

Summary
proceedings
against
defaulting
officers.

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within five days after written notice^(b) in that behalf from the local authority to deliver up to the local authority all books, papers, writings, property, and things in his possession or power relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall

Section 196. thereupon summon the party charged to appear before a court of summary jurisdiction.(c)

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business,(d) if it appears to the court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts, books, papers, writings, property, or things, as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, and things in respect of which the charge was made: Provided that a person shall not be imprisoned under this section for a period exceeding six months.(e)

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever.(f)

(a) It is to be observed that these words apply to every local authority, whether urban or rural.

(b) See sections 266—7, *post*, as to the authentication and service of this notice, which should be signed by the clerk.

(c) See the definition in section 4, *ante*, p. 22.

(d) As defaulting officers frequently abscond, this mode of service is very usual. By the *last place* of abode is meant the then present place of abode if the defaulter has any; the last which he had if he has ceased to have any. Per COLERIDGE, J., in *Reg. v. Evans*, 19 L. J. M. C. 151. The words of the text, however, are the *last known* place of abode. As to these words, see *Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116; see also *Reg. v. Brown*, 1 L. T. (N.S.) 529; 21 J. P. 5; *Reg. v. Smith*, L. R. 10 Q. B. 604; 23 W. R. 523; 39 J. P. 613; *Reg. v. Cambridgeshire (Justices of)*, 44 J. P. 168; *Reg. v. Lee*, W. N. (1888) 22; 58 L. T. (N.S.) 384; 36 W. R. 415; 52 J. P. 344; *Reg. v. Farmer or Salford JJ.* [1892], 1 Q. B. 637; 61 L. J. M. C. 65; 65 L. T. (N.S.) 736; 40 W. R. 228; 56 J. P. 341; 17 Cox C. C. 413.

(e) Under 11 & 12 Vict. c. 63, s. 39, there was no limitation of time for the imprisonment; so that the prisoner, if obdurate, might have had to remain in prison for his life, but if he rendered an account and could not pay the balance, he could have been committed to prison for three months only. This distinction does not now remain. Whether the provision be imperative upon the justices may be questioned. Upon a similar provision in 17 Geo. 2, c. 38, s. 2, the Court of Queen's Bench held that it was in the discretion of the justices whether they would commit to gaol an overseer who neglected to account. *Reg. v. Norfolk (Justices of)*, 4 B. & Ad. 238.

The failure to render an account or give up books is a continuing offence, and, therefore, the limitation against proceedings contained in section 252, *post*, will not apply. Indeed, the order of justices under this section, so far as it applies to the delivery of books, is not penal, but only in the nature of a distress. See *Mayer v. Harding*, 17 L. T. (N.S.) 140; 32 J. P. 421. The neglect to pay over the moneys is a substantive offence, and to this section 252 may apply.

The Debtors Act, 1869 (32 & 33 Vict. c. 62), does not operate to prevent the imprisonment of the defaulter. See *Reg. v. Pratt*, L. R. 5 Q. B. 176; 39 L. J. M. C. 73; 18 W. R. 626; S. C. *sub. nom. Ex parte Cole*, 21 L. T. (N.S.) 750; 34 J. P. 150. It has been decided that a discharge in bankruptcy operates to prevent an auditor from enforcing his certificate of a sum due from an overseer, the sum being a debt and payable in the bankruptcy, although there were special means provided for enforcing payment, viz., by distress and imprisonment. *Reg. v. Martin or Master*, L. R. 4 Q. B. 285; 38 L. J. M. C. 73; 19 L. T. (N.S.) 733; 17 W. R. 442; 10 B. & S. 42.

It may be a serious question whether this section is affected by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Section 6 of that Act provides that where by any Act, whether past or future, a sum of money claimed to be due is

recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and recoverable accordingly. Section 35 provides that a person shall not be imprisoned in respect of a court debt except after proof of means on judgment summons. The proceedings to recover money under this section in the text seem to fulfil all the requirements of section 6 of the Act of 1879, and if so, that section would seem to supersede the procedure prescribed in this text.

(f) It is a question not yet settled by authority whether a committal to prison will operate as a release of the defaulter's own liability. See the Debtors Act, 1869, s. 5, which is incorporated by section 35 of the Summary Jurisdiction Act, 1879, and the case of *Evans v. Wills* (45 L. J. Q. B. 420; 24 W. R. 883; 40 J. P. 552), decided with reference to that section.

Mode of conducting Business.

197. Every urban authority shall (a) from time to time provide (b) and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act.

Note to
Section 196.

Urban authority to provide offices.

(a) Note that these words are imperative; nevertheless the nature of the provision must leave some discretion to the authority. The enactment is confined to *offices*, and does not embrace a town hall.

(b) Section 175, *ante*, p. 244, enables the urban authority to procure the requisite site for the premises. If the charge for the providing of the offices be heavy, a loan can be obtained for the purpose, as to which see sections 233—244, *post*.

198. Where an urban authority are the council of a borough they shall, subject to the provisions of this Act, (a) exercise and execute their powers, authorities, and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England. (b)

Proceedings, &c., of urban authority being the council of a borough.

(a) Query, what are the provisions referred to?

(b) An opinion formerly prevailed that where corporate boroughs adopted the previous Acts relating to public health and local government, and became local boards of health, a new body was created, so that the corporation filled two separate and distinct functions. This opinion was to some extent supported by *Reg. v. Gloucester*, *ante*, p. 262, and *Anthony v. Brecon Market Company*, L. R. 7 Ex. 399; 41 L. J. Ex. 201; 26 L. T. (N.S.) 979; 21 W. R. 27; 31 J. P. 200. But in *Andrews v. Ryde* (*Mayor, &c., of*), L. R. 9 Ex. 302; 43 L. J. Ex. 174; 32 W. R. 58, it was decided that they were not two distinct bodies, and that the corporate body was the local board, or, in other words, that the local board had no existence, so that every contract, whether with the corporation acting as a local board, or with the corporation alone, was essentially made with the corporation. Hence no separate seals were required, nor separate liability incurred. See also *Pedder v. Preston* (*Mayor, &c., of*), 12 C. B. (N.S.) 535; 31 L. J. C. P. 291; 10 W. R. 773; 6 L. T. (N.S.) 549; 9 Jur. (N.S.) 496, which was in conformity with that decision.

The proceedings at the meetings of the council of a borough are regulated by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 22, and Schedule 2.

199. Every urban authority (not being the council of a borough) shall hold an annual meeting, (a) and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act.

Meetings, &c., of urban authority not being the council of a borough.

Meetings of local boards shall be held and the proceedings thereat

Section 199. shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any improvement commissioners^(b) may, if they think fit, adopt all or any of such rules.

(a) This section is now applied to rural as well as urban district councils (other than borough councils) by section 59 of the Local Government Act, 1894, *post*. This meeting must be held as soon as convenient after the 15th of April in each year. See Schedule I., rule 11, *post*.

(b) See the definition in section 4, *ante*, p. 4.

Power of urban authority to appoint committees. [Rep. except as to boroughs by 56 & 57 Vict. c. 73, s. 89.]

200. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: (a) Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, (b) and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

This section, except so far as it applies to boroughs, has been repealed by section 89 and Schedule II. of the Local Government Act, 1894 (56 & 57 Vict. c. 73), and the appointment of committees of district councils other than the councils of boroughs is now regulated by sections 56 and 57 of that Act, *post*.

(a) The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 36, required the local board to approve of the acts of the committee, but there was a doubt as to the effect of this approval. This requisition is now removed. But the local authority may restrain the committee from acting wholly or partially without their sanction, and the proviso contains a statutory restraint upon the committee as to sundry matters of importance.

When under the previous Acts a local board appointed a committee and afterwards passed a resolution approving the minutes of the committee resolving that certain streets should be paved, notices were given, and on default of the owners the board passed a resolution approving a resolution of the committee that the work should be done by the surveyor, it was held that none of these acts required the statutory approval of the council, as all the acts were acts of the board on the recommendation of the committee, and therefore did not require to be approved. *Barnsley Local Board v. Sedgwick*, L. R. 2 Q. B. 185; 36 L. J. M. C. 65; 15 L. T. (N.S.) 569; 8 B. & S. 202; 15 W. R. 514; 31 J. P. 165.

Where a board constituted by an Act of Parliament is authorised by it to delegate any of its powers to a committee, the powers so conferred by the committee must be exercised by them acting in concert; and it is not competent to the committee to apportion among themselves the duties as delegated to them; and one of them acting alone pursuant to such apportionment, cannot justify his acts under the Acts of Parliament. *Cook v. Ward*, 2 C. P. D. 255; 36 L. T. (N.S.) 893; 25 W. R. 593; 41 J. P. 439.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 22, enables a town council to appoint out of their own body committees "for any purposes which in the opinion of the council would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval." It appears to be doubtful whether such approval is necessary in the case of a committee appointed for the purposes of this Act; but probably it is not necessary. If such approval is necessary, it must be under seal should it be relied upon for the ratification of a contract requiring a seal but not under seal, and made by the committee on behalf of the corporation. *Oxford (Mayor, &c., of) v. Crow* [1893], 3 Ch. 535; 69 L. T. (N.S.) 228; 42 W. R. 200; 8 R. 279.

(b) In *Eaton v. Basker*, *ante*, p. 241, a contract was entered into by a committee, and it was held that the council were bound by the contract as having been made by their agents, but that as it was made with the committee as such and not with the members of it individually, the latter were not personally liable upon it.

201. *A rural authority may, at any meeting specially convened for the purpose, delegate for the current year of their office all their powers to a committee consisting wholly of their own members; provided that one-third at least of such committee shall consist of ex officio guardians, but in case an adequate number of such ex officio guardians does not exist, then the number deficient shall be made up of elected guardians; and any such committee shall have the powers by this Act vested in the rural authority by which it was formed, and shall be deemed to be during such year of office as aforesaid the rural authority of the district.*

Section 201.
Power of rural authority to delegate their powers and duties to a committee.
[Rep. by 56 & 57 Vict. c. 73, s. 89.]

This section is now wholly repealed by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 89 and Sched. II.

202. *A rural authority (including any committee so formed as aforesaid)(a) may, at any meeting specially convened for the purpose, form for any contributory place(b) within their district, a parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place,(c) and qualified in such other manner (if any) as the authority forming such parochial committee may determine.*

Power of rural authority to form parochial committees.

A rural authority (including any committee so formed as aforesaid)(d) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place.(e)

A parochial committee shall be deemed to be the agents of the authority(f) which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

See also the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 15, *post*, under which a rural district council may delegate to a parish council any power which may be delegated to a parochial committee.

(a) This parenthesis seems to signify that if a rural authority has formed a committee under the last section they have parted with all their powers, and the committee can appoint this parochial committee.

(b) See section 229, *post*, p. 308, as to what is a contributory place.

(c) No amount of rate is required. The authority may prescribe some other qualification, but it is not apparent what that qualification shall be. Residence in

**Note to
Section 202.**

the place or within a prescribed distance might be one qualification. Where there is a parish council and the committee is formed in part of members of the district council, the other members must be selected from the members of the parish council. See the Local Government Act, 1894, s. 15, *post*.

(d) It is presumed that this must be rendered *reddendo singula singulis*; so that the parochial committee can be dealt with only by the authority which constituted it.

(e) Hence the committee can make no appointment of officers. The local authority can only appoint officers for the whole of their district, though probably they can assign to them duties to be performed only in the district of the parochial committee. It will be seen hereafter that the salaries of all officers form part of general expenses.

(f) These words raise some difficulty. If the strict rule of agency be followed, the committee cannot act except according to the powers delegated to them by the authority, and, if they exceed them, they must obtain a ratification of their act. But probably a greater latitude of action is proposed to be exercised by them. They can report on the state of their district, recommend works and supervise the execution of them; they can inspect, admonish, and stipulate for the removal of nuisances. It will be observed that though they may incur expenses, they can only do so when expressly authorised, and then only within the prescribed limit.

Casual
vacancies in
committees
may be filled.

203. Any casual vacancy occurring by death, resignation, disqualification, or otherwise, in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

It is presumed that the limitation of time contained in this section is directory only. See *R. v. Sparrow*, 2 Str. 1123; *R. v. Norwich*, (*Mayor of*), 1 B. & Ad. 310; *R. v. Denbighshire*, 4 East, 142; *Caldow v. Pixell*, 2 C. P. D. 562; 46 L. J. C. P. 541; 36 L. T. (N.S.) 469; 25 W. R. 773. From these and similar cases a general rule may be deduced that when the time prescribed for the performance of an act is not essential to its validity, and there is no provision for non-compliance, the limitation of time is merely directory.

Meetings and
proceedings
of committees.
[Rep. by
56 & 57 Vict.
c. 73, s. 89.]

204. *Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee), in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.*

This section is now wholly repealed by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 89, and Sched. II.

Inspectors
may attend
meetings of
certain
authorities.

205. Inspectors of the Local Government Board(a) may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board.(b)

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

(a) See section 296, *post*, and 34 & 35 Vict. c. 70, s. 3, in the Appendix.

(b) They have no power to take part in the proceedings so as to vote on any matter. They can hear what passes and can advise when consulted. They can also convey any message from the Local Government Board. But even these proceedings are prohibited at Oxford.

As to the definition of local board, see section 4, *ante*, p. 4.

206. Every local authority shall make an annual report, in such **Section 206.** form and at such time as the Local Government Board may from time to time direct, of all works executed, and of all sums received and dis- Local authority to report. bursements made by them under and for the purposes of this Act during the preceding year, and shall send a copy to the Local Government Board: An urban authority shall also publish a copy in some local newspaper circulating in their district.

The General Order for Accounts, 22nd March, 1880, prescribes a form of financial statement to be prepared by the Board in accordance with the provisions of the District Auditors Act, 1879, s. 3. This statement has to be sent to the Local Government Board, and appears to take the place of the return required by this section.

PART VI.

RATING AND BORROWING POWERS, &c.

EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

Section 207. **207.** All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, *(a)* shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, *(b)* subject to the following exceptions ; (namely,)

Mode of
defraying
expenses of
urban autho-
rity.

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts *(c)* were at the time of the passing of this Act payable out of the borough fund or borough rate, *(d)* then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate ; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) *(e)* in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate *(f)* leviable by them as such commissioners throughout the whole of their district *(g)* then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate ; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners ; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving, sewerage, or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid. *(h)*

(a) See the saving in section 319, *post*, as to special district rates heretofore made, and the charges thereon.

By a local Act (58 Geo. 3, c. lxxxi.), certain persons therein mentioned were appointed commissioners for the purpose of paving the footways, and cleansing, lighting, and watching the streets in the town of Monmouth. By section 59 "the said commissioners shall and are hereby authorised and required once in every year to rate and assess any sum not exceeding one shilling in the pound, upon or in

respect of all houses, &c., being within the limits of the said town of Monmouth." By section 57, "all and every person or persons paying the rates and assessments hereby authorised to be levied within the said town, shall be, and they and every of them is and are hereby exempted and discharged from all charges and expenses of paving, lighting, watching, cleansing, or fencing off any part or parts of the footways and crosspaths of the said town and borough." By the Public Health Act, 1872, the borough of Monmouth (within which was the town of Monmouth) was created an urban sanitary district, and the mayor and corporation the urban sanitary authority. By section 16, all expenses incurred or payable by an urban sanitary authority under the Sanitary Acts, were to be defrayed in the case of the council of a borough out of the borough fund or borough rate. By the amending Act of 1874, all the powers and duties of the commissioners under the said local Act, relating to any objects or purposes were transferred to the council. After the passing of the present Act, the town council, as the urban sanitary authority for the borough, made a general borough rate to meet expenditure which included the paving, lighting, and cleansing of the town. A ratepayer who occupied a house within the borough, but outside the town of Monmouth, appealed on the ground that the rate was made in part for raising money towards defraying the expenses of carrying the Monmouth Rating Act into execution. It was held that the rate was invalid. *Monmouth (Mayor, &c., of) v. Monmouth (Overseers of)*, 38 L. T. (N.S.) 612.

Note to
Section 207.

As to the misapplication of funds and illegal charges, see the note to section 218, *post*, p. 296.

(b) See section 219, *post*, p. 299.

(c) See the definition in section 4, *ante*, p. 21.

(d) This means legally payable. In some boroughs owing to the difficulty in the interpretation of 35 & 36 Vict. c. 79, the expenses had not been charged in point of fact to the borough fund or rate; in some other cases they had been wrongfully charged in the manner provided by this section. These different erroneous charges were rendered valid by section 338, *post*, but that section has been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39). It is, therefore, necessary in some cases to determine whether before the Act the expenses in question were or were not legally payable out of the borough fund or rate. For an instance in which they were held not to be so payable, see *Walsall (Overseers of) v. London and North Western Railway Company*, 4 App. Cas. 467; 48 L. J. M. C. 336; 51 L. T. (N.S.) 160; 28 W. R. 52; 41 J. P. 149, see notes to section 211, *post*, p. 289.

As to the borough fund and rate, and the charges which may legally be paid out of them, see the Municipal Corporations Act, 1882, ss. 139, 159, and Schedule V.

(e) See the definition in section 4, *ante*, p. 4.

(f) See section 210, *post*, p. 278, as to what is a general district rate.

(g) Note these words. They remove an ambiguity which arose upon 35 & 36 Vict. c. 79, s. 16, in the proviso; and it must be observed also that the reference is as to what is legally payable, and not as to what had been so charged in fact.

Section 211, *post*, provides that general district rates shall be made and levied on the occupiers of all kinds of property for the time being by law assessable to any rate for the relief of the poor; and further, that the occupier of any land used as a railway constructed under the powers of an Act of Parliament for public conveyance shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof. By 28 Geo. 3, c. 64, and 34 Geo. 3, c. 104, commissioners appointed under those Acts, called improvement commissioners, were empowered to levy a rate not exceeding 1s. in the pound on the annual value of all houses, buildings, and hereditaments within the town of Cambridge, for the purpose of carrying into execution certain specified improvements mentioned in those Acts. At the time of the passing of those Acts, and until 1856, the colleges and halls of the University, and also the corporation, were extra-parochial, and not assessable to the above-mentioned rate. The respondents, acting as improvement commissioners and as the urban sanitary authority, assessed the appellants, who were owners of land and property, for the purpose of carrying into execution the Cambridge Improvement Acts and of the Public Health Act, 1875. It was held that the rate leviable by virtue of the Cambridge Improvement Acts was not "a rate in the nature of a general district rate leviable throughout the whole of the district" within the meaning of section 207, and as regards so much of the rate levied on the appellants as was necessarily applicable to the purposes of the Act,

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the appellants were liable to be assessed in the proportion of one-fourth only of the net annual value of their land and property used as a railway within the district of the respondents. *Great Eastern Railway Company v. Cambridge Improvement Commissioners*, 61 L. T. (N.S.) 243.

(h) This paragraph applies to cases where there was a local Act in force in the district, or where the borough had adopted some of the provisions of 11 & 12 Vict. c. 63, or 21 & 22 Vict. c. 98. The charges for the future are to continue to be charged in like manner as they were legally charged before the passing of the Act.

Power in certain cases by provisional order to alter mode.

208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts, (a) the Local Government Board may, on the application of such authority, (b) or of any ten persons rated to the relief of the poor within the district, (c) declare by provisional order (d) that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways. (e)

(a) See the definition in Schedule V., Part I., *post*. These payments were generally charged under a local Act.

(b) This application must be made in writing, which should be on foolscap folio paper, and in the case of the authority should be signed by their clerk. It need not be sealed. In other cases the signatures should if possible be attached at the foot of the written application.

(c) No specific amount of rating is necessary.

(d) See section 297, *post*, as to the provisional orders of the Local Government Board.

(e) See section 216, *post*.

General District Rate.

District fund account.

209. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund : (a) a separate account called "the district fund account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority ; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper. (b)

(a) Though the treasurer is to keep the account of the fund, the authority should also keep a proper notice of it in their ledger.

(b) Note that in this matter the authority appears to have an absolute discretion, though the next section only enables a district rate to be made when the district fund is insufficient to meet the expenses.

Making general district rate.

210. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority (a) shall from time to time, as occasion may require, make by writing under their common seal, (b) and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates."

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retro-

spectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate : (c) in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded. (d)

Public notice (e) of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement (f) of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and at least (g) seven days previously thereto ; (h) but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given. (i)

(a) Though it is not desirable that an urban authority should act in levying rates if not duly constituted, it is nevertheless very doubtful whether the legality of the election can be tried in resisting a district rate levied by them. See Sched. II., rule 70 (now repealed by the Local Government Act, 1894), *post*, and *Howitt v. Manful*, 6 E. & B. 736 ; 25 L. J. Q. B. 411 ; 2 Jur. (N.S.) 883 ; 20 J. P. 387. In that case the board had required the justices to issue their distress warrant upon which distress the action of replevin was brought (as to this see *Ex parte Grumpsall Local Board*, 20 J. P. 771). The point was not absolutely decided, for the court held that the local board were legally constituted. It had been held that the validity of the election of members of a board of guardians could not be questioned upon a *mandamus* to enforce a contribution for the relief of the poor. *Reg. v. St. Andrew's, Holborn (Guardians of)*, 10 A. & E. 736.

(b) These words remove a difficulty raised in *Reg. v. Workson Local Board*, 5 B. & S. 951 ; 34 L. J. M. C. 220 ; 11 Jur. (N.S.) 1015 ; 12 W. R. 710 ; 10 L. T. (N.S.) 297 ; 28 J. P. 596. The members need not now sign the rate.

The rates which can now be levied by the urban sanitary authority under this Act are the general district rate, the water rate, the highway rate, the private improvement rate, and, perhaps, in certain special cases, a burial rate. See Sched. III., Part 3, *post*.

Care must be taken not to provide in the general district rate for expenses otherwise chargeable. In *Dryden v. Putney (Overseers of)*, 1 Ex. D. 223 ; 34 L. T. (N.S.) 69 ; 40 J. P. 263, the expenses of paving a footpath had been improperly charged to the general rate, and the board were afterwards ordered to restore to the general rate the sum so charged, and to levy the amount upon the owners liable. See also *Attorney-General v. Wandsworth District Board of Works*, 6 Ch. D. 539 ; 64 L. J. Ch. 771. And see *Attorney-General v. Newcastle-upon-Tyne (Mayor, &c., of)*, 23 Q. B. D. 492 ; 58 L. J. Q. B. 558 ; 54 J. P. 292, affirmed in H. L. [1892], A. C. 568 ; 62 L. J. Q. B. 72 ; 56 J. P. 836, where the defendants were restrained from applying a borough rate to an illegal purpose.

(c) One general rate may be made to include both past and future expenses if the amount of each is shown in the estimate. A question was raised in *Reg. v. Workson Local Board*, *supra*, as to the effect of insufficiently setting out the sums required in respect of each of the purposes for which the rate was made, but the court did not decide the point.

If the rate purport to be made for the purposes of the Act, it would seem that it is valid in itself, and that any objection with reference to retrospectiveness would properly arise upon payment made by the board. The effect of the section is, therefore, to legalize retrospective payment out of the rate, provided the charges or expenses have been incurred within six months before the making of the rate. No validity is given to payments in respect of debts incurred beyond that time, except when the charges are expressly authorised by this or some previous Act. Since the decision in *Waddington v. City of London Union*, E. B. & E. 370 ; 28 L. J. M. C. 113 ; 22 J. P. 755 ; 5 Jur. (N.S.) 242, it will, perhaps, be a good ground of appeal against the rate that it is to be applied to pay debts due beyond the limited time.

In determining what is the meaning of the term *charges*, reference should be made to *Reg. v. Rotherham Local Board*, 8 E. & B. 906 ; 4 Jur. (N.S.) 261 ; 27 L. J. Q. B. 156 ; 22 J. P. 641. There it was held that a judgment recovered against a local board was a charge, and that the satisfaction thereof having been postponed by mutual

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agreement for a definite period, the six months did not begin to run until the expiration of that period, so that a rate could be levied within six months therefrom. And as the judgment was not satisfied, the court issued a *mandamus* to the local board to make a rate to discharge the judgment.

Where certain commissioners were turned into a local board, having incurred certain liabilities which, by the order constituting the local board, were charged upon their property, it was held that the board were bound to make a rate to discharge this liability, notwithstanding the lapse of this period. *Ward v. Lowndes*, 1 E. & E. 940; 6 Jur. (N.S.) 247; 29 L. J. Q. B. 40; 8 W. R. 81; 1 L. T. (N.S.) 268; 23 J. P. 357. The ground of this decision was that the debt was not a charge incurred by the board within the meaning of the section, and that the board had power, under the order declaring the debt to be a charge on the rates, to levy a rate to defray it without limitation or time.

A plaintiff in his declaration prayed a writ of *mandamus* to compel a local board to levy a rate and pay him the amount awarded. The damage for which compensation was claimed occurred more than six months before the application, but the award was made within six months. The board resisted the claim on the ground that the expenses for which it was sought to compel them to levy the rate had not been incurred within the six months prescribed by the corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 89. It was held that the plaintiff was entitled to his writ, for that the next six months must be reckoned from the time that the award was made. *Ringland v. Lowndes*, 15 C. B. (N.S.) 173; 33 L. J. C. P. 25; 12 W. R. 168; 9 L. T. (N.S.) 479.

A local board having erroneously made a special rate, B. paid his *quota* before the error was discovered. Five years afterwards he commenced an action against the board to recover the money back, and obtained a judgment, and afterwards sued them on the judgment, demanding in his declaration, a *mandamus* to them to make and levy a rate for the purpose of satisfying the judgment:—Held, assuming the debt so contracted by the board to be a *charge*, B. was not entitled to a *mandamus* to levy a rate as the original action was not commenced within six months after the charge was incurred. *Burland v. Kingston-upon-Hull Local Board*, 3 B. & S. 271; 9 Jur. (N.S.) 275; 32 L. J. Q. B. 17; 11 W. R. 33; 7 L. T. (N.S.) 316; 27 J. P. 230. In the same case it was decided that it is no answer to an application for a *mandamus* to levy a rate in such a case that the board may possibly have funds to pay the amount required, and that a fresh rate may not be necessary.

For an instance of the claim of a *mandamus* being inapplicable, see *Bush v. Beavan*, *ante*, p. 262. In an Irish case, *Reg. v. Tranmore Drainage Board*, 30 L. R. Ir. 329, a contractor who had obtained judgment against a drainage board for extra works executed by him under agreement with the board, but not specified in the final award, applied for a *mandamus* to compel the board to levy a rate to satisfy the judgment, but it was held that the *mandamus* should be refused as rates were leviable by the board for the maintenance of works only and not for their construction, which was otherwise provided for.

Where a judgment was recovered against a local board in an action commenced after the expiration of six months from the accrual of the right of action, and a *mandamus* was sued out within six months to enforce the judgment, the Court of Queen's Bench held that a peremptory writ might be granted if sufficient cause were shown to excuse the delay in commencing the action. *Worthington v. Hulton*, L. R. 1 Q. B. 63; 6 B. & S. 943; 12 Jur. (N.S.) 73; 35 L. J. Q. B. 61; 14 W. R. 632; 13 L. T. (N.S.) 463; 30 J. P. 22. Referring to this case, and that of *Reg. v. Rotherham Local Board*, *ante*, Lord BLACKBURN, in *Julius v. Bishop of Oxford*, 4 App. Cas., at p. 243, said: "Though the giving of a power is *primâ facie* merely enabling the donee to act, and so may not inaccurately be said to be equivalent to saying he may act, yet if the object of giving the power is to enable the donee to effectuate a right, then it is the duty of the donee of the power to exercise the power when those who have the power call upon him to do so. Thus, in 11 & 12 Vict. c. 63, s. 89 (see *ante*), the words are, 'The local board *may* make rates prospectively,' &c.; yet on the application of a judgment creditor a *mandamus* will go to compel the making of a rate for the purpose of satisfying a judgment within six months after the judgment has been obtained." These decisions seem to afford a means by which a local board may evade the limitation imposed by the statute, when they are desirous of paying the debt.

In *Swire v. Burley Local Board*, 33 L. T. (O.S.) 222, a rule for a *mandamus* to levy a rate for the payment of a debt was made absolute when the work, payment for which

was claimed, was done in 1857, but the judgment was not obtained until 1859, ERLE, J., remarking that there had been no wilful delay, but the judgment had been delayed by misfortune. In this case, however, the writ had been issued within six months from the completion of the work.

But where through the delay of the plaintiffs it was necessary for the defendants, a local board, to have the authority of a *mandamus* to justify them in paying a sum of money, the court refused to make a rule absolute calling on them to pay the costs of the *mandamus* (*Reg. v. Burleigh Local Board*, 1 L. T. (N.S.) 92), BLACKBURN, J., said: "In this case judgment was not signed until two years after verdict; and that circumstance alone was sufficient to render it desirable that the local board should be justified in making the payment by the authority of a *mandamus*. There has been a delay of two years, and a great part of that time has not been satisfactorily accounted for."

An incorporated body having raised money under statutory powers by debentures issued some of their debentures to one of their own body in payment of goods supplied by him, such a transaction being illegal under the statute by which they were constituted a corporate body:—Held, that in an action by the executors of an innocent holder for value of such securities, the same having been transferred to him from the original mortgagee in the manner provided by the statute, they were estopped from setting up as an offence the original illegality of the transaction, and that under the Common Law Procedure Act, 1854, s. 68, the writ was in the proper form in praying for a *mandamus* to compel them to apply the money in their hands raised under the powers of the statute and applicable to that purpose, and that it was not necessary that the *mandamus* should direct the defendants to levy a rate for the purpose of satisfying the plaintiff's demand. *Webb v. Herne Bay Commissioners*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221; 22 L. T. (N.S.) 745; 19 W. R. 241; 34 J. P. 629.

At the time when the parish of B. was by a provisional order separated from the local government district of M., the special district rates of that district were mortgaged for the unexpired period of twenty-three years to secure the repayment of a debt which had previously been incurred by the local board of the district of M. The statute 24 & 25 Vict. c. 39, which confirmed the provisional order, apportioned the amount which the parish of B. should contribute towards the payment of such debt, and provided that the overseers of that parish should raise the annual instalments required to pay off the sum the parish of B. was to contribute in the name and as part of the rates levied within such parish for the relief of the poor. In July, 1883, the local board paid off the last instalment of principal and interest due under the mortgage, and on the 25th March, 1884, demanded from the overseers of the parish of B. payment of the amount due from the parish since the 13th January, 1879, up to which date the parish had duly contributed in accordance with the 24 & 25 Vict. c. 39. The demand not having been complied with, application was made for a *mandamus* to compel the overseers to levy a rate in order to pay the amount in arrear. It was held that the obligation imposed by the statute on the parish of B. was that they should pay their proportion of the debt annually, and that the effect of the granting of the *mandamus* would be to enforce the levy of retrospective rates; and the court therefore discharged the rule. *Reg. v. Bedlington Overseers*, 48 J. P. 486.

It ought to be added that the writ of *mandamus*, being a prerogative writ, is not a writ of right. The granting of it is, therefore, discretionary. *Reg. v. All Saints', Wigan*, 1 App. Cas. 611; 35 L. T. (N.S.) 381; 25 W. R. 128; 41 J. P. 132. The application for it must be made to the Queen's Bench Division. Per BRETT, L.J., in *Glossop v. Heston and Isleworth Local Board*, ante, p. 46.

It is to be observed that this section applies only to urban authorities. As to when a rate is bad as being retrospective, see *Harrison v. Stickney*, 2 H. L. C. 108; *Jones v. Johnson*, 5 Ex. 862; 15 J. P. 21; *Woods v. Reed*, 2 M. & W. 777; *Reg. v. Maidenhead (Mayor, &c., of)*, 9 Q. B. D. 494; 51 L. J. Q. B. 444; 46 J. P. 724; *Jersey (Earl of) v. Uxbridge Rural Sanitary Authority*, [1891] 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. (N.S.) 858; 7 T. L. R. 568; *Caistor Union v. North Kelsey (Overseers of)*, 59 L. J. M. C. 102; 62 L. T. (N.S.) 731; *Easton v. Nar Valley Drainage Commissioners*, 8 T. L. R. 649. But, as above stated, this objection must be taken on appeal against the rate.

(d) This provision was introduced into 21 & 22 Vict. c. 98, s. 54, because the law officers of the Crown had advised, in 1854, that if a rate were quashed on appeal, the six months' period was not extended, and that any rate of a retrospective character

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would still be limited to that period independently of its date. But it is not easy to see how the clause is to be worked out. It appears to depend upon a result not ascertained at the time when the rate is made. It is impossible to declare that subsequent events can render an absolute act which was legally valid when done, such as the making of the rate, invalid at the time of its being made. But the delay caused by the appeal, and litigation arising out of it, may affect the legality of payments out of the rate.

(e) There is no precise direction as to how this notice is to be published, but it will be best to follow the course adopted with regard to all notices of a public nature required to be given by the authority.

(f) It is by no means clear what is meant by this statement; probably it is the draft of the proposed rate, which, being open to inspection, may be corrected, if erroneous, before it is sealed.

(g) These words mean that both days are to be exclusive. *R. v. Shropshire JJ.*, 8 A. & E. 173; *Young v. Higgon*, 6 M. & W. 49.

(h) It is not apparent for what object this notice is to be given, as no ratepayer can interfere to prevent the rate from being made, unless, indeed, the matter be of sufficient importance to justify an application to the High Court of Justice for an injunction.

(i) But if it be shown that the notice was *not* given, the question will arise whether this notice is a necessary condition precedent, or whether this provision is directory only. It will be seen hereafter (section 222, *post*) that the publication of the rate is not a condition precedent, and there are no words of avoidance in the text in case the notice is not given.

Assessment,
&c., of general
district rate.

211. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect: (a) (namely,)

- (1.) General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable (b) to any rate for the relief of the poor, and shall be assessed on the full net annual value (c) of such property, ascertained by the valuation list (d) for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions, regulations, and conditions; (namely,)

- (a.) The owner, (e) instead of the occupier, may at the option of the urban authority be rated in cases—

Where the rateable value (f) of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

Where any premises so liable are let to weekly or monthly tenants; or

Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly: (g)

Provided that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of

tenements(*h*) whether occupied or unoccupied, then such Section 211. assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers :(*i*)

(*b*.) The owner of any tithes, or of any tithe commutation rentcharge,(*k*) or the occupier of any land used as arable, meadow, or pasture ground only,(*l*) or as woodlands,(*m*) market gardens, or nursery grounds, and the occupier of any land covered with water,(*n*) or used only as a canal or towing-path for the same,(*o*) or as a railway,(*p*) constructed under the powers of any Act of Parliament(*q*) for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof :

(*c*.) If within any urban district or part of such district any kind of property is exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property(*r*) shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any general district rates under this Act unless the Local Government Board by provisional order otherwise direct.(*s*)

(2.) If at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied,(*t*) such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied ; and if any such premises are afterwards occupied during any part of the period(*u*) for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made :

(3.) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier ;(*v*) and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be

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recovered from him in the same manner as if he had been originally assessed or liable :

- (4.) The urban authority may(*w*) divide their district or any street(*x*) therein into parts(*y*) for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed ; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act : Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them in a fair and equitable manner.(*z*)

(*a*) In *South Wales Railway Company v. Swansea Local Board* (*infra*), ERLE, J., commenting upon the corresponding provisions of the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 88, said : " The general scheme of the enactment is that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at a lower rate, and the class of property most benefited is that which is occupied immediately for the purpose of residence, and the kinds of property not so occupied are not to be rated so highly."

(*b*) Reference must be made to text books on the law of rating in order to determine what properties are by law assessable to the poor rate. The principal exemptions from rating are Crown property, such as Royal Palaces, the Houses of Parliament ; Government offices, such as the Post Office, the Horse Guards, and the Admiralty, *Leith Harbour (Commissioners of) v. The Inspector of the Poor*, L. R. 1 H. L. Sc. 17 ; local post offices, *Smith v. Birmingham (Guardians of)*, 7 E. & B. 483 ; 26 L. J. M. C. 105 ; 3 Jur. (N.S.) 769 ; bridges in the occupation of the Commissioners of Works, *Reg. v. McCann*, L. R. 3 Q. B. 141 ; 37 L. J. M. C. 123 ; 16 W. R. 985 ; 19 L. T. (N.S.) 115 ; 32 J. P. 579 ; barracks, *Lord Amherst v. Lord Sommers*, 2 T. R. 372 ; prisons, *Gambier v. Lydford (Overseers of)*, 3 E. & B. 346 ; 23 L. J. M. C. 69 ; 18 J. P. 456 ; 18 Jur. 352 ; county buildings, such as courts of assize and quarter sessions, judges' lodgings, police stations, &c., *Reg. v. St. Martin's, Leicester*, L. R. 2 Q. B. 493 ; 8 B. & S. 536 ; 36 L. J. M. C. 99 ; 16 L. T. (N.S.) 625 ; 15 W. R. 1036 ; 31 J. P. 613 ; *Showers v. Chelmsford Union* [1891], 1 Q. B. 339 ; 60 L. J. M. C. 55 ; 64 L. T. (N.S.) 755 ; 39 W. R. 231 ; 55 J. P. 8 ; 7 T. L. R. 81 ; county courts, *Hodgson v. Carlisle Local Board*, 8 E. & B. 116 ; 4 Jur. (N.S.) 160 ; 21 J. P. 421 ; *Nicholson v. Holborn Union*, 18 Q. B. D. 161 ; 56 L. J. M. C. 54 ; 55 L. T. (N.S.) 775 ; 35 W. R. 230 ; 51 J. P. 341 ; *Macharg v. Stoke-upon-Trent Assessment Committee*, 48 J. P. 775 ; volunteer drill halls and storehouses, *Pearson v. Holborn Union* [1893], 1 Q. B. 389 ; 62 L. J. M. C. 77 ; 68 L. T. (N.S.) 351 ; 57 J. P. 169 ; 5 R. 290, &c. There are also exemptions by virtue of statutes, such as personal property under 3 & 4 Vict. c. 89, an Act which is renewed annually ; turnpike tolls, under 3 Geo. 4, c. 125, s. 51, and 4 Geo. 4, c. 95, s. 31 ; churches and places of religious worship, under 3 & 4 Will. 4, c. 30 ; Sunday and ragged schools, under 32 & 33 Vict. c. 40 ; properties occupied by societies instituted for purposes of science, literature, or the fine arts exclusively, under 6 & 7 Vict. c. 36 (see *Art Union of London v. Savoy (Overseers of)* [1894], 2 Q. B. 609 ; 63 L. J. M. C. 253 ; 71 L. T. (N.S.) 40 ; 42 W. R. 690 ; 59 J. P. 20 ; 9 R. 690 ; 10 T. L. R. 576), and a few others of less importance. As to the privilege of an ambassador and his suite from payment of rates, see *Parkinson v. Potter*, 16 Q. B. D. 152 ; 55 L. J. Q. B. 153 ; 53 L. T. (N.S.) 818 ; 31 W. R. 215 ; 50 J. P. 470 ; *Macartney v. Garbutt*, 24 Q. B. D. 368 ; 62 L. T. (N.S.) 656 ; 38 W. R. 559 ; 54 J. P. 437 ; 6 T. L. R. 214.

It is not now a ground of exemption from rating that the property is occupied for public purposes. *Mersey Docks and Harbour Board Trustees v. Cameron*, 11 H. L. Cas. 443 ; 20 C. B. (N.S.) 56 ; 35 L. J. M. C. 1 ; 11 Jur. (N.S.) 746 ; 13 W. R. 1069 ; 12 L. T. (N.S.) 643.

Unoccupied property cannot be rated. *Smith v. New Forest Union*, 61 L. T. (N.S.) 870 ; 54 J. P. 324 ; 6 T. L. R. 31.

Upon similar words in a local Act, it was held that the *owner* of unoccupied and unfurnished premises was not rateable. *Sligo (Corporation of) v. Wynne*, 7 Ir. R. C. L. 465. As to the rating of houses occupied only by caretakers, see *Yates v. Overseers of Chorlton-upon-Medlock*, 48 L. T. (N.S.) 872; 47 J. P. 630; *Hicks v. Overseers of Dunstable*, 48 J. P. 326. A workhouse was held to be rateable by virtue of similar words in 21 & 22 Vict. c. 98, s. 55. *Toxteth Park (Guardians of) v. Toxteth Park Local Board*, 30 L. J. M. C. 154; 1 B. & S. 167; 4 L. T. (N.S.) 283; 9 W. R. 691; 25 J. P. 645. Some recent decisions on the rating of various kinds of property may here be mentioned. As to the rating of property purchased by the Postmaster-General under the Telegraph Acts, see *St. Gabriel, Fenchurch (Overseers of) v. Williams*, 16 Q. B. D. 649; 55 L. J. M. C. 14; 34 W. R. 256; 50 J. P. 533. As to the rating of telegraph and telephone wires, see *Paris and New York Telegraph Company v. Penzance Union*, 12 Q. B. D. 552; 53 L. J. M. C. 189; 50 L. T. (N.S.) 790; 32 W. R. 859; 48 J. P. 693; *Lancashire, &c., Telephone Exchange Company v. Manchester (Overseers of)*, 14 Q. B. D. 267; 54 L. J. M. C. 63; 52 L. T. (N.S.) 793; 33 W. R. 203; 49 J. P. 724. As to the rating of board schools, see *Reg. v. West Bromwich School Board*, 13 Q. B. D. 929; 53 L. J. M. C. 153; 52 L. T. (N.S.) 164; 32 W. R. 866; 48 J. P. 808; *Reg. v. London School Board*, 34 W. R. 583; 50 J. P. 519; *Owen's College v. Overseers of Chorlton-upon-Medlock*, 18 Q. B. D. 403; 56 L. J. M. C. 29; 56 L. T. (N.S.) 373; 35 W. R. 236; 51 J. P. 356. As to the rating of a payment in lieu of tithes, see *Reg. v. Christopheron*, 16 Q. B. D. 7; 55 L. J. M. C. 1; 53 L. T. (N.S.) 804; 34 W. R. 86; 50 J. P. 212; *Esdaile v. London (City of) Assessment Committee*, 19 Q. B. D. 431; 56 L. J. M. C. 149; 57 L. T. (N.S.) 749; 35 W. R. 722; 51 J. P. 564; *Edwards v. St. Olave's Union*, 8 T. L. R. 647. As to the rating of machinery, see *Tyne Boiler Works Company v. Tynewmouth (Guardians of)*, 18 Q. B. D. 81; 56 L. J. M. C. 8; 55 L. T. (N.S.) 825; 35 W. R. 110; 51 J. P. 420; *Giffard v. Chard Union*, 63 L. T. (N.S.) 249, affirmed in Ct. of App., 6 T. L. R. 431; *Hoyle v. Oldham Union* [1894], 2 Q. B. 372; 63 L. J. M. C. 178; 70 L. T. (N.S.) 741; 58 J. P. 669; 9 R. 287. As to the rating of a railway let at a fixed rent, see *Altrincham Union v. Cheshire Lines Committee*, 15 Q. B. D. 597; 50 J. P. 85; *North and South Western Railway Company v. Brentford Union*, 13 App. Cas. 592; 58 L. J. M. C. 95; 60 L. T. (N.S.) 274; *Manchester, Sheffield, and Lincolnshire Railway v. Doncaster Union*, 69 L. T. (N.S.) 350; 57 J. P. 792; 10 T. L. R. 567. As to the rating of a reformatory school, see *Tunncliffe v. Birkdale (Overseers of)*, 20 Q. B. D. 450; 59 L. T. (N.S.) 190; 36 W. R. 360; 52 J. P. 452; and of an industrial school, see *Durham County Council v. Chester-le-Street Assessment Committee* [1891], 1 Q. B. 330; 60 L. J. M. C. 9; 63 L. T. (N.S.) 461; 39 W. R. 188; 54 J. P. 759; 7 T. L. R. 35. As to the rating of sewage farms and pumping stations, see *Burton-on-Trent (Mayor, &c., of) v. Eggington (Churchwardens of)*, 24 Q. B. D. 197; 59 L. J. M. C. 1; 62 L. T. (N.S.) 512; 38 W. R. 181; 54 J. P. 453; 6 T. L. R. 67; *London County Council v. Erith Churchwardens* [1893], A. C. 562; 63 L. J. M. C. 9; 69 L. T. (N.S.) 725; 42 W. R. 330; 57 J. P. 821; 6 R. 22; *Leicester Corporation v. Beaumont Leys Churchwardens*, 63 L. J. M. C. 136; 70 L. T. (N.S.) 659; 10 R. 401. As to the rating of docks, see *Sculcoates Union v. Hull Docks Company* [1895], A. C. 136; 64 L. J. M. C. 49; 71 L. T. (N.S.) 642. As to the rating of harbour tolls and dues, see *Sutton Harbour Improvement Company v. Plymouth Guardians*, 39 W. R. 231; *Blyth Harbour Commissioners v. Newsham and South Blyth Churchwardens* [1894], 2 Q. B. 675; 63 L. J. M. C. 274; 71 L. T. (N.S.) 34; 59 J. P. 4; 9 R. 618; 10 T. L. R. 562; of gasworks, see *Edinburgh Gas Light Company v. Assessor for Leith*, 14 Ct. of Sess. Cas. 583; *Kinross Gas Light Company v. Assessor for Kinross*, 17 ib. 850; of gas mains and pipes, *Southport (Mayor, &c., of) v. Ormskirk Assessment Committee* [1894], 1 Q. B. 196; 63 L. J. Q. B. 250; 68 L. T. (N.S.) 852; 42 W. R. 153; 58 J. P. 212; 9 R. 46; of a drainage tunnel and watercourse, *Holypell Union v. Halkyn District Mines Drainage Company* [1895], A. C. 117; 64 L. J. M. C. 113; 71 L. T. (N.S.) 818; 11 T. L. R. 132. As to the rating of advertisement stations, see 52 & 53 Vict. c. 27, and *Chappell v. St. Botolph (Overseers of)* [1892], 1 Q. B. 561; 65 L. T. (N.S.) 581; 40 W. R. 192; 56 J. P. 310; *Shelley v. Dillon*, 30 L. R. Ir. 304. As to the rating of market tolls, see *Williams v. West Bromwich (Overseers of)*, 54 J. P. 389. As to the rating of waterworks, see the cases cited on p. 78, *ante*.

(c) See the definition of full net annual value in section 4, *ante*, p. 11.

(d) Though there is no further description of this list, the section must refer to the valuation list made by the union assessment committee, which alone shows the annual value of properties assessed to the poor rate. The statutes in force with reference to the making and revising of the valuation lists are the Union Assessment Committee Acts, 1862 and 1864 (25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39). The Local Government Act, 1848 (21 & 22 Vict. c. 98), s. 56, enabled the local board at

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their own option to have a valuation made for themselves, but this option is taken away, and the valuation list must now be followed, or the poor rate in the very few cases when there is no such list. The term *valuation list* has acquired a technical meaning.

It will be seen that section 221, *post*, provides for the amendment of the rate when made.

(e) See the definition of owner in section 4, *ante*, p. 6. 59 Geo. 3, c. 12, s. 19, and 13 & 14 Vict. c. 99, contained provisions with regard to the assessment of *owners* to the poor rate. The former was impliedly repealed (*West Ham (Churchwardens of) v. Fourth City Mutual Building Society* [1892], 1 Q. B. 654; 61 L. J. M. C. 123; 66 L. T. (N.S.) 350; 40 W. R. 446; 56 J. P. 438), and the latter expressly repealed by 32 & 33 Vict. c. 41, s. 6, so far as it relates to the poor rate (and see 45 & 46 Vict. c. 27, as to highway rates). It is to be noticed that when the urban authority determine to put in force this provision, the owner is to be *rated*. The statute does not require the occupier to be rated and enable the owner to pay the rate less a commission as in 32 & 33 Vict. c. 41, s. 3.

The authority may, as it seems, select particular owners to be rated instead of the occupiers, and omit others. The words of the section give the authority a discretion in this respect.

Note that this provision applies only where there is an occupier: per Lord COLERIDGE, C.J., in *Reg. v. Barclay*, *infra*.

(f) This appears to mean the *net rateable value* as distinguished from the *gross estimated rental*. See afterwards in the section, and see also *ante*, p. 11. Refer also to section 4, *ante*, p. 6, for the definition of *premises*.

Upon any change in the rateable value of the premises whereby the assessment is increased to more than 10*l.*, the owner will cease to be rateable under this provision. *Norwood (Overseers of) v. Salter* [1892], 2 Q. B. 118; 61 L. J. M. C. 193; 67 L. T. (N.S.) 376; 56 J. P. 535; 8 T. L. R. 568.

(g) It is to be observed that where the premises are let to weekly or monthly tenants, or in separate apartments, there is no limit as to the annual value, and in some cases the authority may prefer to rate the actual occupiers instead of the owners. The provisions of 59 Geo. 3, c. 12, s. 19, may be usefully compared with those in the text, and the decision of the House of Lords upon the former Act may be referred to. *West Ham (Churchwardens of) v. Iles*, 8 App. Cas. 386; 52 L. J. Q. B. 650; 49 L. T. (N.S.) 205; 31 W. R. 928; 47 J. P. 708.

(h) Note that the word *tenements* is here used in place of *premises*, but probably there is no difference in the meaning of the enactment. See *New River Company v. St. Pancras (Vestry of)*, 45 J. P. 75.

(i) A discretionary power is here given to the urban authority to rate an owner in respect of tenements, whether occupied or unoccupied; but when the owner is so rated the authority has no discretion to rate him at an amount other than one-half the rateable value. *Reg. v. Barclay*, 8 Q. B. D. 486; 51 L. J. M. C. 47; 46 L. T. (N.S.) 335; 30 W. R. 672; 46 J. P. 693; (C. A.) affirming the decision of the Queen's Bench Division, 8 Q. B. D. 306; 51 L. J. M. C. 27; 46 L. T. (N.S.) 102; 30 W. R. 472; 46 J. P. 167.

The allowances made under 32 & 33 Vict. c. 41, ss. 3, 4, in the case of a poor rate, are different.

(k) For the proper mode of rating tithe rentcharge to the poor rate, see *Reg. v. Goodchild* and *Reg. v. Hawkins*, 27 L. J. M. C. 233; E. B. & E. 1; 22 J. P. 14; overruled in some respects by *Reg. v. Sherford*, L. R. 2 Q. B. 503; 36 L. J. M. C. 113; 8 B. & S. 596; 16 L. T. (N.S.) 663; 15 W. R. 1035; 31 J. P. 629; and *Lawrence v. Tolleshunt Knights*, 31 L. J. M. C. 148; 2 B. & S. 533; 10 W. R. 620; 26 J. P. 422; 8 Jur. (N.S.) 866. 14 & 15 Vict. c. 50, which is not repealed by this Act, provided that tithes, tithe rentcharges, moduses, compositions real, and other payments in lieu of tithes should be assessed under 11 & 12 Vict. c. 63, s. 88, as and in the same proportion of their annual value as land used as arable, meadow, or pasture land only.

As to the recovery of rates on tithe rentcharge, see the Tithe Act, 1891 (54 Vict. c. 8), s. 6, and *Roberts v. Potts*; *Jones v. Cooke* [1894], 1 Q. B. 213; 63 L. J. Q. B. 381; 69 L. T. (N.S.) 849; 42 W. R. 294; 58 J. P. 333; 9 R. 230.

(l) For a case where there was an exemption of all arable land exceeding two acres under a local Act, and where there was, therefore, a conflict between the provisions of the local Act and the text, see *Walton (Commissioners of) v. Walford*, cited in the note to section 227, *post*, p. 307.

Land occupied by a booth used at the time of races, but not otherwise used, was held not to fall under any of these exemptions, and was, therefore, to be assessed at its full value. *Reg. v. Briscoe*, 20 J. P. 52.

(m) This exemption is now extended to orchards by 53 & 54 Vict. c. 17, and to allotments by 54 & 55 Vict. c. 33. Both these Acts are set out, *post*. It is singular that the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 56, contained the provision as to the rating of woodlands, although such property was not assessable to the poor rate except when there were saleable underwoods, before 37 & 38 Vict. c. 54. That statute in section 12 enacts that "the provisions of the Sanitary Acts as defined by the Public Health Act, 1872, with respect to any special assessment of woodlands for the purpose of any rate under those Acts, shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both of such purposes, and made rateable by this Act to the poor rate." Under this Act woods and woodlands must be rated in their natural and unimproved state. See *Baker v. Beyford (Overseers of)*, 33 L. T. (N.S.) 755; *Westmoreland (Earl of) v. Southwick and Oundle*, 36 L. T. (N.S.) 108; S. C. *sub-nom. Reg. v. Oundle Union*, 41 J. P. 231. But a right of sporting over such woodlands may be taken into account as enhancing their value. *Eyton v. Mold (Overseers of)*, 6 Q. B. D. 13; 50 L. J. M. C. 39; 43 L. T. (N.S.) 472; 29 W. R. 122; 45 J. P. 54. In 1885 the Middlesex Sessions decided that land covered with glass and used for the purposes of forcing fruit and flowers for early markets was within this exception as being a nursery or market garden. *Kay v. Finchley Local Board*, 49 J. P. 488. And the High Court has since decided to the same effect. *Purser v. Worthing Local Board*, 18 Q. B. D. 818; 56 L. J. M. C. 78; 35 W. R. 682; 51 J. P. 596; 3 T. L. R. 636.

(n) These words apply to the reservoir, but not to the pipes and mains of a water company. The pipes are merely the medium of carrying the water from the reservoir, and are not privileged. *Reg. v. Birmingham Waterworks Company*, 1 B. & S. 84; 4 L. T. (N.S.) 242; 25 J. P. 308. As to the rating of mains and pipes, see *Reg. v. West Middlesex Waterworks Company*, 1 E. & E. 716; 28 L. J. M. C. 135; 32 L. T. (O.S.) 388; 23 J. P. 164; *Reg. v. Southwark and Vauxhall Water Company*, 6 E. & B. 1008; 3 Jur. (N.S.) 411; 21 J. P. 501; 5 W. R. 71; and for the rating of waterworks in the hands of a corporation or sanitary authority, see *Worcester (Mayor of) v. Droitwich Union Assessment Committee*, 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. (N.S.) 186; 25 W. R. 336; 41 J. P. 355; *Liverpool (Mayor of) v. Wavertree (Overseers of)*, 2 Ex. D. 55; 39 J. P. 101; *Peterborough (Mayor of) v. Stamford Union*, 31 W. R. 949; *Reg. v. South Staffordshire Waterworks Company*, 16 Q. B. D. 359; 55 L. J. M. C. 88; 54 L. T. (N.S.) 786; 34 W. R. 242; 50 J. P. 20; *Deusbury and Heckmondwike Waterworks Board v. Penistone Assessment Committee*, 17 Q. B. D. 384; 55 L. J. M. C. 121; 54 L. T. (N.S.) 592; 34 W. R. 662; 50 J. P. 644; *Reg. v. Birstall Local Board*, 1 T. L. R. 541; *Merthyr Tydvil Local Board v. Merthyr Tydvil Union* [1891], 1 Q. B. 186; 60 L. J. M. C. 42; 63 L. T. (N.S.) 647; 39 W. R. 255; 55 J. P. 294. As to the payment of income tax in respect of profits arising out of waterworks, see *Glasgow Corporation v. Miller*, 50 J. P. 503.

These words were held to apply to a dock belonging to a dock company. *Reg. v. Newport Dock Company*, 2 B. & S. 708; 31 L. J. M. C. 266; 6 L. T. (N.S.) 457; 9 Jur. (N.S.) 73; and see per Lord CAMPBELL, C.J., in *Peto v. West Ham (Overseers of)*, 2 E. & E. 144 (at p. 157); 5 Jur. (N.S.) 1209; 28 L. J. M. C. 240; 7 W. R. 586; 23 J. P. 422; and per BLACKBURN, J., in *Reg. v. Midland Railway Company*, L. R. 10 Q. B. 389; 44 L. J. M. C. 137; 32 L. T. (N.S.) 753; 23 W. R. 921; 40 J. P. 198; and to a canal and filter beds supported on brick arches and sometimes covered with water and sometimes not. *East London Waterworks Company v. Leyton Sewer Authority*, L. R. 6 Q. B. 669; 40 L. J. M. C. 190; 20 W. R. 98; 35 J. P. 677.

(o) Bridges over a canal, dry docks, and posts put up for purposes of navigation are all accessories to the canal, and must be treated as part thereof. Both the canal and its accessories must be treated as land covered with water. *Reg. v. Neath (Overseers of)*, L. R. 6 Q. B. 707; 40 L. J. M. C. 193. This case may usefully be compared with *Peto v. West Ham (Overseers of)*, *supra*. Where the predecessors in title of a railway company were empowered by statute to scour, enlarge, deepen and otherwise improve the navigation of a river, and to make a towing path, it was held that the company were not in occupation of the bed of the river, but had merely an easement; nor was the ownership or exclusive occupation of the towing-path vested in them, and that they were, therefore, not rateable in respect either of the bed of the river, or of the towing path. *Doncaster Union v. Manchester, Sheffield and Lincolnshire Railway Company*, 71 L. T. (N.S.) 585; 6 R. 280; 10 T. L. R. 567.

Note to Section 211. (p) The word *railway* means the way on which carriages actually go, including the line itself, the turntables, and sidings, and land used only for the supporting of this way, as for embankments, &c. All these are within the proviso, and are to be assessed at the lower rate. But the adjuncts, such as stations and warehouses, though necessary for the working of the railway, do not form part of it within the proviso, and land used for the latter purposes is assessable at its full net annual value. *South Wales Railway Company v. Swansea Local Board*, 4 E. & B. 189; 1 Jur. (N.S.) 326; 24 L. J. M. C. 30.

In the *North-Eastern Railway Company v. Scarborough Local Board*, 33 J. P. 244, it was held that in assessing a railway and sidings, &c., to the general district rate, the sidings, turntables, and strip of land adjacent to the line were all to be treated as part of the railway except such part of the strip of land as was not necessary for the use of the railway proper.

By a local improvement Act, "as to all rates made and levied by the municipal corporation of H.," the N. railway company were to be assessed at one-fourth of the net annual value. The H. corporation before and after the Act obtained their borough and watch rates in parish S. by means of warrants addressed by the mayor to the overseers of S., ordering them to pay the several amounts required out of the poor rate, and the overseers assessed the ratepayers accordingly as in poor rate valuations. It was held that the H. corporation, and not the overseers, made and levied the borough and watch rates, and that the company were assessable only at one-fourth of the net annual value. *North-Eastern Railway Company v. Sutton (Overseers of)*, 51 J. P. 165.

The appellants, under the powers given to them by certain local Acts, constructed a tramway communicating by points and switches with a railway in their possession, which was worked by them in conjunction with the tramway, and had been constructed by them under an Act of Parliament. It was held that the land occupied by the tramway was not "used only as a railway" within the meaning of the text, and that the appellants were not entitled to be rated in respect of it at one-fourth part only of its net annual value. *Swansea Improvements and Tramway Company v. Swansea Urban Sanitary Authority* [1892], 1 Q. B. 357; 61 L. J. M. C. 124; 66 L. T. (N.S.) 119; 40 W. R. 283; 56 J. P. 248.

A railway, constructed under an Act of Parliament, for the transportation of traffic and as accessory to a dock, but free to the public on payment of certain rates and tolls, is a railway within this proviso, although neither used nor intended for the conveyance of passengers. *Reg. v. Newport Dock Company, supra*.

By a borough improvement Act, authorising a rate to be levied, it was provided that the occupiers of any land used only as a railway constructed under the powers of an Act of Parliament, should be rated at one-fourth part only of the net rateable value. Sidings and turntables occupying about ten acres of land were used for loading trucks and carriages with goods, and also as a standing place for laden and unladen carriages, and were necessary for conducting the traffic of the railway. It was held that these were rateable at one-fourth of the net annual value. *Midland Railway Company v. Birmingham (Council of)*, 13 L. T. (N.S.) 404; 30 J. P. 197.

A railway company which received wharfage dues in respect of a piece of land, between the line of rails and a navigable river, was held to be properly rated at the full net annual value in respect of such land, as the land was used for a purpose other than that of a railway. *Reg. v. Taff Vale Railway Company*, 22 J. P. 21.

Certain Local Government Acts appointed improvement commissioners for sanitary purposes over a district which lay partly within and partly without the borough of Walsall. The commissioners had power to levy rates to defray expenses which they were bound to incur. The rate on any railway within the commissioners' district was, by a local Act of 1828, limited to one-fourth of the rateable value of the railway. Part of a line of railway did run through the district, and was so rated under the local Act up to 1872. By the Public Health Act, 1872, urban authorities were constituted, and the mayor and town council became an urban authority for, amongst others, sanitary purposes in the borough. Both bodies, the commissioners and the town council, were given powers to make rates to defray the expenses incurred by them in the discharge of their respective duties. In the grant to the town council of rating powers, nothing was said with regard to any limit of rating upon any particular kind of property. Then came the present Act of 1875, which contained in particular section 207, *ante*, p. 276, and the sub-section in the text. By a local Act of 1876, the limits of the borough were greatly extended, and the mayor, &c., of the borough became the sanitary authority for the extended borough. The local Act of 1848 was

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repealed, with the exception of certain sections. Among the excepted sections, that one which limited the amount of rateability of railways was not mentioned, but nothing was said specifically to put an end to that limited liability. It was held by the House of Lords, upon the true construction of the various Acts, public and local, that there having been no express revocation of the privilege granted in respect of rating the railway at only one-fourth of its rateable value, a borough rate calculated on its full rateable value could not be maintained. *Walsall (Overseers of) v. London and North-Western Railway Company*, 4 App. Cas. 467; 48 L. J. M. C. 336; 41 L. T. (N.S.) 160; 28 W. R. 52; 41 J. P. 149.

(g) A railway constructed over land without purchase, but under contract to pay way leaves, used for the purpose of working mines and carrying goods, was held not to be within this exception, although under certain Acts of Parliament it had become vested in the railway company. *North Eastern Railway Company v. Leadgate Local Board*, L. R. 5 Q. B. 157; 39 L. J. M. C. 65; 22 L. T. (N.S.) 62; 18 W. R. 691; 34 J. P. 598.

(r) The language of this proviso is the same as that used in the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 88, and several cases have been decided upon the words *the same kind of property*. By these cases it has been settled that the words do not apply to the locality or the situation or the mode of occupation of the property, but to the nature of the property itself. See *Chelmsford Union v. Chelmsford Local Board*, 2 E. & B. 500; 18 Jur. 376 n.; 16 J. P. 341; *Tait v. Carlisle Local Board*, 2 E. & B. 492; 18 Jur. 374; *Turner v. Halifax (Mayor, &c., of)*, 9 B. & S. 623. In *Luscombe and Others v. Plymouth Local Board*, E. B. & E. 691; 27 L. J. M. C. 299; 31 L. T. (O.S.) 314; 4 Jur. (N.S.) 1234; 23 J. P. 212, there was a difference of opinion among the judges whether the exemption which arose under the local Act could be properly considered as depending upon locality and situation, or upon the nature of the property under the local Act there referred to; the rate was to be assessed among other matters upon all gardens, tenements, and hereditaments, adjoining to or upon any of the streets, lanes, roads, messuages, or other public places made within the populous or town parts of the borough of Plymouth, or at no greater distance than 100 feet from some street within such populous or town part. ERLE, J., considered that this described a *kind of property*, namely, *town property*, upon which the rate was to be laid, and that the other, namely, *country property*, was exempt. The other judges, however, considered this to be only a description of the locality which was to be exempt, and, therefore, that the country property in the district was not exempt from the district rate. By a Local Improvement Act, 6 Geo. 4, c. cxxii., s. 103, the commissioners of a town were authorised to make district rates for defraying the expenses of the Act, provided that none of the rates or assessments which should be made by virtue of the Act should be laid upon or in respect of "any houses or buildings used and occupied exclusively for the purposes of public charity." It was held that an orphanage founded and used for the purpose of boarding, lodging, clothing, and educating the children of deceased railway servants, and supported partly by subscriptions from railway servants, but mainly by donations from the public, was open to such an extensive class of the community of the kingdom that the premises were used and occupied exclusively for the purposes of public charity within the proviso of the Act, and, therefore, exempt from rateability under it. *Hall v. Derby Sanitary Authority*, 16 Q. B. D. 163; 55 L. J. M. C. 21; 54 L. T. (N.S.) 175; 50 J. P. 278.

Compare with this proviso the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 164, and the cases on that section cited in *Woolrych's Metropolis Management Acts*, at p. 105.

The workhouse of a parish not co-extensive with the district is not exempt from this rate. *Toxteth Park (Guardians of) v. Toxteth Local Board*, ante, p. 285.

The exemption which is to be continued must be one of right and not one of fact only. Thus, by a local Act, 41 Geo. 3, c. xxx., the occupiers of houses in Sculcoates under 8*l.* yearly value were exempt from rates. The 4 Will. 4, c. v., rendered the owners of all houses under 10*l.* yearly value liable to rates instead of the occupiers. By 17 & 18 Vict. c. ci. (1854), the owners of all houses under such value were rendered liable to an improvement rate. But section 124, reciting that the occupiers of houses under the yearly value of 8*l.* were exempt from rating by 41 Geo. 3, c. xxx., enacted that whatever exemption from rates was enjoyed in respect of the premises referred to in the recital should be enjoyed in the same way and manner and to the same extent as was enjoyed before the passing of the Act. Sculcoates

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having been included in the district of a local board, the Court of Queen's Bench held that the owners of houses in Sculcoates under 8*l.* were properly included in the district rate. *Coates v. Kingston-upon-Hull Local Board*, 2 Jur. (N.S.) 1086; 20 J. P. 467.

(s) See *post*, section 297, p. 391, as to provisional orders, and section 303, p. 397, as to the alteration of local Acts.

Independently of this proviso, property which is exempt from the poor or local rates by express statutes will be exempt from the general district rate. See note (b), *supra*.

If a corporation borrow money for purposes to which these acts apply, and charge the borough rate, it may supersede all these exemptions, as they do not exist in reference to that rate. See *Attorney-General v. Birmingham (Corporation of)*, L. R. 3 Eq. 552.

(t) This sub-section applies whether the occupiers are rated or the owners, except in the case of owners when they have elected to be rated, whether the premises are occupied or not, under the previous sub-section. See the judgment of FIELD, J., in *Reg. v. Barclay*, *supra*. The objection that an owner is improperly rated under this section may be taken before justices when proceedings are instituted to enforce payment.—Per CAVE, J., *ib.*

(u) It is here contemplated that the rate will be made for a certain period, but the Act does not require it to be so made. 32 & 33 Vict. c. 41, s. 14, requires the poor rate to be made for a period, and section 16 of that Act contains a provision similar to that in the text.

(v) By this provision the outgoing occupier is at liberty to pay a proportionate part of the rate to the urban authority. Hence, it must be to the interest of every ratepayer not to pay his rate as long as he can postpone it, so as to have the benefit of any abatement. *Quere*, whether a ratepayer entitled to any such abatement might recover the amount after payment of the full rate. If the ratepayer quit the premises without payment, and has no immediate successor, the urban authority will lose the residue of the rate.

There was no similar provision with regard to the poor rate until 45 & 46 Vict. c. 20, s. 3.

As to the payment of rates as preferential debts in the distribution of the property of a bankrupt or of the assets of a company being wound up, see the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), and the notes thereto in the Appendix.

(w) This word gives a discretion to the local board. A local board laid out sums of money in permanent improvements, and, for defraying the expenses in part, borrowed money on mortgage of the special district rates. The permanent improvements consisted in works for lighting a town within the district, and for supplying it with water and for sewage. A large part of the district, owing to the inclination of the ground and the character of the occupation, derived no direct or immediate benefit from these works. To defray the expenses and to raise the interest and the instalments of the debt, the local board laid a special district rate on the whole district. It was held that the rate was valid, for that it was discretionary with the local board whether they would divide the district, and that, as they had not done so, the rate must be laid on the whole district. *Dorling v. Epsom Local Board*, 5 E. & B. 471; 1 Jur. (N.S.) 956; 24 L. J. M. C. 152; 20 J. P. 20. The same point was decided in the same way on the authority of *Dorling v. Epsom Local Board* in *Newport (Mayor, &c., of) v. Lang*, 57 J. P. 197. Compare the provisions of 18 & 19 Vict. c. 120, s. 159 (Metropolis), and the cases decided thereon, especially *West Middlesex Water Company v. Wandsworth District Board*, 22 J. P. 336.

Under a similar section a precept to overseers for the levy of a rate stated that the expenses, in respect of which it was needed, were not required for the equal benefit of the parish, and directed the rate to be levied as regarded such parts of the parish as consisted of land used as arable, meadow, or pasture land only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, in proportion of one-fourth part only of the net annual value of such land. The classes of land mentioned in the precept did not lie together or form any division marked out by metes and bounds, but were scattered through the parish. It was held by the Court of Appeal that the precept was good. *Reg. v. London, Brighton, and South Coast Railway*, 5 Q. B. D. 89; 49 L. J. M. C. 32; 41 L. T. (N.S.) 577; 28 W. R. 288; 43 J. P. 765.

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Section 211.

In *Mayer v. Burslem Local Board*, 39 J. P. 437, a local board resolved to divide their district into three sub-districts, and by a bye-law afterwards resolved that the resolution shall not be altered unless one month's notice were given. It was held that until the resolution was duly rescinded a general rate could not be made for the whole district.

The authority cannot under this sub-section charge the general district rate with private improvements. See *Dryden v. Putney (Overseers of)*, ante, p. 279.

As to the reimbursement of the general district rate in respect of moneys borrowed for this part, see section 234, sub-section (6), post.

(x) See the definition in section 4, ante, p. 11.

(y) See *Reg. v. London, Brighton, and South Coast Railway Company*, supra. It would appear that a street need not be divided by a line at right angles to the centre line, but may be divided in any reasonable way the board may think fit to adopt. Per COTTON, L.J., in *Nutter v. Accrington Local Board*, ante, p. 173.

(z) These are very indefinite terms. It seems that the apportionment is left to the urban authority, as no appeal against it is provided.

212. For the purpose of assessing general district rates any person appointed by the urban authority may inspect, take copies of, or make extracts from, any valuation list or rate for the relief of the poor within the district, or any book relating to the same.

Inspection of
poor rate
books for
purposes of
assessment.

Any officer having the custody of any such rate(a) or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding five pounds.(b)

(a) The term *list* is unfortunately omitted here. 21 & 22 Vict. c. 98, s. 56, from which this section is taken, did not give an inspection of the list. It is not, however, to be supposed that the clerk of the assessment committee, who has the custody of the list, will refuse to permit inspection, though he may not be liable to the penalty for refusal. No fee is chargeable for the inspection.

(b) As to the recovery of this penalty, see section 251, post.

Private Improvement Rate.(a)

213. Whenever an urban authority(b) have incurred(c) or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred,(d) in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.(e)

Power to
make private
improvement
rates.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner(f) for the time being of the premises so long as the same continue to be unoccupied.

(a) The sections under which expenses may be declared to be private improvement expenses are sections 23, 36, 41, 62, and 150 of this Act, section 3 of the Public Health (Water) Act, 1878, some sections of the Public Health Acts Amendment Act, 1890, and the Housing of the Working Classes Act, 1890, s. 38, sub-sect. (8). See section 240, post, as to rent-charges in respect of advantages made for private improvements.

Note to Section 213. (b) Note that section 232, *post*, p. 314, provides for private improvement rates by a rural authority.

(c) Apparently the urban authority must either pay those expenses out of the funds raised by their other rates (as to which see sections 207, 211 (4), *ante*), or borrow the sum required by them for those expenses in the first instance. See, therefore, the duty imposed upon the authority in regard to such borrowing by sections 233 and 234 (6), *post*, and in section 240, *post*, a mode of securing the repayment to the lender by means of a rentcharge to issue out of the premises.

(d) These words seem to imply that the expenses in question have been ascertained in respect of each separate premises as by apportionment. See the note on the subject, *ante*, p. 196.

(e) See, however, the appeal to the Local Government Board, which is given in section 268, *post*.

(f) See the definition in section 4, *ante*, p. 6. The owner will thus be liable to a rate in which his name does not appear. The Rochdale Improvement Act, 1875, contained sections as to private improvement rates which were to be made for expenses of paving new streets, and to be a charge on the lands adjoining. The remedies for the recovery of rates were the same as those contained in the Towns Improvement Clauses Act. A rate was made on the 7th August, 1879, on "John Seedell or owner," for 71l. The appellants were then mortgagees of the premises, but were not in possession. J. Seedell died before September, 1879, and the appellants then entered into possession of the land. In July, 1885, the justices were applied to and issued a distress warrant against the appellants who were then in possession. It was held that the justices were wrong in issuing a distress warrant against the appellants who were not named in the rate, though they had subsequently been in possession of the lands. It was held further that the justices were entitled to state a case as to their jurisdiction in enforcing such rate. *Rochdale Building Society v. Mayor, &c., of Rochdale*, 50 J. P. 164; 51 J. P. 134; 2 T. L. R. 397.

Proportion of private improvement rate may be deducted from rent.

214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, (a) he shall be entitled (b) to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof. (c)

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him. (d)

(a) See the definition in section 4, *ante*, p. 11.

(b) But this right will be controlled by the language of the covenants contained in the lease. See section 226, *post*, p. 302, and the notes thereon; and see in *Smith v. Humble*, 15 C. B. 321; 18 J. P. 760, an illustration of the principle of deduction of a tax chargeable on the owner from the rent paid to him.

It would seem that the amount can only be deducted from the next rent payable to the landlord, and if rent is paid without deduction it cannot be deducted from

any subsequent rent. See *Daves v. Thomas* [1892], 1 Q. B. 414 ; 61 L. J. Q. B. 482 ; 66 L. T. (N.S.) 451 ; 40 W. R. 305 ; 56 J. P. 326.

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Section 214.

(c) See the definition in section 4, *ante*, p. 6. Thus the rent received by the owner being 100*l.*, and the rent paid by him being 20*l.*, if the sum deducted by the tenant be 10*l.*, the landlord may deduct 2*l.* from the rent paid to the owner in fee.

(d) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

215. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, (a) or such part thereof as may not have been defrayed by sums already levied in respect of the same :

Redemption
of private
improvement
rates.

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise. (b)

(a) These words appear to assume that the amount of the expenses has already been ascertained, *e.g.*, by apportionment. See the note on this subject, *ante*, p. 196.

(b) *Query*, what is to be done with the payment if no further works of private improvement are required, and no money has been borrowed, or if the loan has been discharged ?

Highway Rate.

216. In any urban district (a) where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows ; (that is to say,)

Costs of
repairs of
highways.

- (1.) Where the whole of the district is rated for works of paving, water-supply, and (b) sewage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate : (c)
- (2.) Where parts of the district are not rated for works of paving, water-supply, and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate (d) to be separately assessed and levied in those parts by the urban authority as surveyor of highways, (e) and the cost of such repair in the residue of the district shall be defrayed out of the general district rate :
- (3.) Where no public works of paving, water-supply, and sewerage are established (f) in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district (g) by the urban authority as surveyor of highways :

Section 216. Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, *(h)* liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act, 1858, Amendment Act, 1861,) *(i)* or unless such excluded part has been included in a highway district under the Highways Acts, *(k)* for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district. *(l)*

Provided also, that in the case of an urban district constituted after the passing of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by Schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways; *(m)* but the requisition for holding any such meeting shall be made with six months *(n)* after the constitution of the urban district. *(o)*

The court of quarter sessions may by order direct that for any *(p)* such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts. *(q)*

(a) It is here to be noticed that the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 7, which constituted highway boards for the repair of highways in combined or united parishes, contained an exception of all places where a local board had been constituted under the Public Health Act (*i.e.*, under this Act, see section 313, *post*). But 26 & 27 Vict. c. 17, s. 6, repealed and re-enacted in Schedule V., *post*, provided that "when any district under the Public Health Act . . . or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district."

(b) Note the copulative. If the whole of the district be rated for some, but not all, of these purposes, yet if some are provided for the whole district, the charge will be upon the general district rate; when there is a part which is not liable to any general rate for any of the purposes specified, a highway rate is to be levied under the next sub-section.

See the cases cited in note *(f)*, *infra*.

(c) See section 209, *ante*, p. 278. It may here be mentioned that in county boroughs the cost of repairing bridges and approaches formerly repairable by the county now falls on the borough fund. See the Local Government Act, 1888, s. 34 (2), *post*.

(d) That is, a rate made and levied according to the provisions of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), and amending Acts, of which note particularly the Highway Rate Assessment and Expenditure Act, 1862 (45 & 46 Vict. c. 27). As to the amount of the rate, see *Dyson v. Greetland Local Board*, 13 Q. B. D. 946; 53 L. J. M. C. 106; 48 J. P. 896.

(e) See section 144, *ante*, p. 157.

(f) The meaning of this word has been discussed in two cases. In *Oxenhope Local Board v. Bradford (Mayor, &c., of)*, 47 L. T. (N.S.) 344; 31 W. R. 223; 47 J. P. 21, a local board made a general district rate and a highway rate, and demanded the same from the respondents, who had constructed two compensation reservoirs in connection with the supply of water for the town of Bradford. The respondents contended that the local board had no power to levy a highway rate, because in 1880 they had laid down in their district a kerbstone about 200 yards long as a coping to a cinder pathway by a public road. It was held that the putting down of the kerbstone did not

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Section 216.

constitute the establishment of public works of paving within the meaning of this sub-section, and, therefore, that the appellants were entitled to levy a highway rate. FIELD, J., said: "What does *established* mean? One knows perfectly well it does not mean one single act. If a man on one particular day sells a particular class of goods, he does not thereby establish a business for the sale of those goods. I cannot think that the word *established* in this section was ever intended to mean a single act of that kind was to be construed as being public works established in the district." It may be mentioned incidentally that the dispute in this case arose with respect to the rating of the reservoirs which, when assessed to the general district rate, were assessable only at one-fourth their full net annual value. In *Reg. v. Belper Local Board*, 46 J. P. 166, the facts were as follows: In the B. urban district when formed, and when the local board began to take charge of the repair of highways, there were some old-fashioned stone drains or culverts into which some houses sent their sewage, and into which storm water entered through gratings, but the board had not added to these, nor made any new works themselves. The board made a highway rate. It was held that the existing drains sufficiently answered the description of public works established in the district, and therefore that the expense of highway repairs should have been paid out of the general district rate, and not by a highway rate. GROVE, J., said: "I quite appreciate the argument that it is not because there may be a sewer having something of a public character, that there must necessarily be public works of sewerage within the meaning of the Act. There must be, to a reasonable extent, works of a public nature." In *Birmingham Canal Company v. Docker*, 24 J. P. 691, a local board had been in the habit, by arrangement with the owners or occupiers adjoining, of constructing stone kerbs along the footpaths of certain roads and streets in their district, and of paying half the expense:—Held, that this was not "a public work of paving" within the corresponding section of the Local Government Act, 1858. It appears from the case of *Oxenhope Local Board v. Mayor, &c., of Bradford*, *supra*, that an objection to a highway rate on the ground that public works are established in the district may be taken at the hearing of a summons to enforce payment.

(g) A local board for a district consisting of a parish comprising three townships came within the description set out in this sub-section. The local board levied a highway rate for one of the townships, but it was held that they had no authority to do so, for that the highway rate must be levied over the whole district. *Re Broughton Local Board*, 12 L. T. (N.S.) 310; 29 J. P. 324.

(h) See section 275, *post*.

(i) That is, 24 & 25 Vict. c. 61, s. 9.

(k) See section 144, note (c), *ante*, p. 164.

(l) By 45 & 46 Vict. c. 27, s. 9, it is provided that when at the time of the passing of that Act (12th July, 1882) part of a parish is excluded from an urban sanitary district, but such excluded part is, for purposes connected with the repairs of highways and the payment of highway rates, treated as forming part of the district, the owners and ratepayers of the excluded part may, by resolution passed at a meeting to be convened and conducted in manner provided by Schedule III. of the Public Health Act, 1875, decide that such part shall be a highway parish, and if the resolution is approved by an order of the Local Government Board, the excluded part shall, from a date to be fixed by the said order, be, for the purposes connected with highways, surveyors of highways, and highway rates, considered and treated as a separate highway parish. And by section 25 (4) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, where the council of a rural district becomes the highway authority for that district (see sub-section (1) of the same section) any excluded part of a parish under section 216 of the Public Health Act, 1875, which is situate in that district shall cease to be part of any urban district for the purpose of highways, but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.

(m) And therefore exempt from the control of the urban authority.

(n) These must be calendar months; see 52 & 53 Vict. c. 63, s. 3.

(o) The Highway Act, 1864 (27 & 28 Vict. c. 101), s. 5, provided that when part of a parish was, in pursuance of the Local Government Act (1858) Amendment Act, 1861, s. 9 (for which the provisions of this Act are now substituted, see section 313, *post*), treated as forming part of a district constituted under the Local Government Act, 1858 (*i.e.*, this Act), for all purposes connected with the repairs of highways and the payment of highway rates, but for no other purpose, such part should, for the purposes of the Highway Acts, 1862 and 1864, be deemed to be a place separately maintaining

Note to Section 216. — its own highways, and capable of being included in a highway district without requiring the consent of the local board to be given. But see now section 25 (4) of the Local Government Act, 1894, cited in note (l), *supra*.

For the constitution of this district, see section 275.

(p) This is a new provision, which supplies a defect under the previous law where a parish included a highway district was divided, and part placed within an urban sanitary district, either by the extension of the boundaries of a borough or the constitution of a local government district. That action appeared to vacate the office of waywarden, and there were no means to provide a waywarden for the excluded part. Now such a waywarden can be appointed.

Though the language is thus general, it is doubtful whether parishes affected by such division before the Act will be entitled to avail themselves of the provision wherever there is no waywarden for the excluded part. This paragraph appears to refer to the previous one, which is limited to future places.

With regard to the adjustment of accounts consequent upon such division it will probably be found that the provision in section 304, *post*, will be applicable.

(q) See note (k).

Certain acts not required to be done in case of highway rate made by urban authority.

217. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them ;(a) (that is to say,)

To lay such rate before any justices, or obtain their allowance ;

To annex thereto the signature of such urban authority ;(b)

To lay the same before the parishioners assembled in vestry ;

To verify before any justices any accounts kept by them of such highway rates ;

and all such accounts shall be audited(c) in all respects in the same way as the other accounts of the urban authority.

(a) These are all matters required by 5 & 6 Will. 4, c. 50, in respect of highway rates.

(b) According to section 222, *post*, the rate is to be made in such manner as the urban authority may appoint. It will be best that it should be made as the general district rate "in writing under their common seal." See section 210, *ante*, p. 278.

(c) See sections 245—250, *post*.

General Provisions as to Urban Rates.

Estimate to be prepared before making rates.

218. Every urban authority before proceeding to make a general district rate or private improvement rate under this Act, shall cause an estimate(a) to be prepared of the money required for the purposes(b) in respect of which the rate is to be made, showing—

The several sums required for each of such purposes ; and

The rateable value of the property assessable ; and

The amount of rate which for those purposes it is necessary to make on each pound of such value ;(b)

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat ; but it shall not

be deemed part of the rate, nor in any respect affect the validity of the Section 218. same.(c)

(a) Much doubt existed as to the effect of this estimate as required by 11 & 12 Vict. c. 63, s. 89. The Court of Queen's Bench at first appear to have treated it as analogous to the title of the poor rate, so that if it contained an illegal item it was bad. See *Reg. v. Workop Local Board*, 21 J. P. 451. The question afterwards arose as to whether an insufficient statement of an item would avoid the rate. The consequences of such a decision were so serious that the court in a subsequent case arising out of the proceedings of the same local board, declined to decide the question whether the section had that effect, or whether it was directory only. *Reg. v. Workop Local Board*, 34 L. J. M. C. 220; 5 B. & S. 951; 11 Jur. (N.S.) 1015; 12 W. R. 710; 10 L. T. (N.S.) 297; 29 J. P. 759. This question is now settled by the passage at the end of this section.

The proper mode of carrying this regulation into effect appears to be to enter the estimate in a page of the book preceding the rate.

The local board must be careful, besides this estimate, to cause the rate to have a good title, otherwise it will be void. *Reg. v. Byron*, 12 Q. B. 321; 17 L. J. M. C. 134; 12 J. P. 362; *Moulton (Overseers of) v. Eastern Counties Railway*, 5 E. & B. 974; 25 L. J. M. C. 49; 2 Jur. (N.S.) 161; 20 J. P. 566. In *Reg. v. Wilkinson*, 2 T. L. R. 862, the court refused a *mandamus* to compel justices to allow a rate on the ground that the heading was left blank and did not show what the rate was for.

Again, though the estimate has no legal consequence in itself, perhaps its absence may invalidate the rate; and as its absence may have this effect, so also an illusory or defective estimate may have it. It may, therefore, be noticed that the Court of Queen's Bench held, in *Reg. v. Workop Local Board*, *supra*, that "election expenses, filling in drains, and cleansing drains and outfall," and also "law charges, surveyor's instruments, and incidental expenses," were respectively improperly grouped together in the estimate as individual items.

(b) But though the estimate will not affect the validity of the rate, it must not be considered that the rate will be valid if it be made for purposes which are illegal, and which may be shown in the estimate.

In considering what are legal or illegal purposes, it is to be remarked that the charges of an accountant employed to investigate the accounts of a local board were held by the justices at quarter sessions to be illegal, being, under the circumstances of the case, in their judgment unnecessary, and the Court of Queen's Bench decided that this was a question for the sessions, and declined to reverse their decision. *Reg. v. Workop Local Board*, 21 J. P. 451.

Again, it was held by the same court that a local board could not make a district rate to pay the costs of defending certain *quo warranto* informations brought against individual members of the board, which did not impeach the validity of the whole board; nor the expenses of opposing a local bill brought into Parliament by a gas-light company in their district for an increase of powers. But the expenses of opposing proceedings in Chancery against the board for certain works which they had caused to be executed were held to be a legal charge, although the suit was not ended when payment was proposed to be made. *Reg. v. Marris*, 5 W. R. 254; 28 L. T. (O.S.) 266; 21 J. P. 580. And see *R. v. Bridgewater (Mayor of)*, 10 A. & E. 281; *R. v. Leeds (Mayor of)*, 4 Q. B. 796; 12 L. J. Q. B. 369; 7 Jur. 669; D. & M. 143. It has been held, however, in the case of a municipal corporation, that they are justified in defraying out of the corporate funds the expenses of defraying *quo warranto* informations against individual members of the corporation, if the object of such informations were to impeach the title or destroy the legal existence of the corporation as a body. *Holdsworth v. Dartmouth (Mayor of)*, 11 A. & E. 490; 4 Jur. 605, which is in accordance with *Attorney-General v. Norwich (Corporation of)*, 2 My. & C. 406; 1 Jur. 398.

A metropolitan vestry incorporated under 18 & 19 Vict. c. 120, were restrained from applying any part of their rates in paying the expenses of a dinner or ball or other ceremonies in connection with the opening of a new vestry hall. But as no part of the rates had been actually so applied, it was held that individual vestrymen who had voted for the resolution for the dinner, &c., could not be made parties to the action for the purpose of obtaining costs from them. *Attorney-General v. Bermondsey (Vestry of)*, 23 Ch. D. 60; 52 L. J. Ch. 567; 31 W. R. 463; 48 L. T. (N.S.) 445; 47 J. P. 453. And see *Reg. v. Bedford (Mayor of)*, 47 J. P. 756; *Attorney-General v.*

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Blackburn (Corporation of), 57 L. T. (N.S.) 385; *Attorney-General v. Bailey (Mayor, &c., of)*, 26 L. T. (N.S.) 392; *Attorney-General v. Cardiff (Mayor of)* [1894], 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. (N.S.) 591; 8 R. 268; 10 T. L. R. 420. An action for an injunction to restrain improper payments out of rates must be in the name of the Attorney-General. *Holden v. Bolton (Corporation of)*, 3 T. L. R. 676.

In *Reg. v. Marris, supra*, it was held that as the rate was made for some items which were illegal, it was altogether void. This is in conformity with *Chesterton v. Farlar*, 1 Curt. 354; 2 Moore P. C. 330. See also *R. v. Sillifant*, 4 A. & E. 354; 5 N. & M. 640; *Reg. v. Byron*, 3 N. S. C. 180; 12 Q. B. 321; 12 Jur. 479; 17 L. J. M. C. 134; *Tozer v. Child*, 6 E. & B. 289; 2 Jur. (N.S.) 928; 25 L. J. Q. B. 337; 20 J. P. 805. It appears, however, that the rate may be enforced as long as it is good on the face of it. When this is the case the rate can only be impeached by appeal to quarter sessions on the ground that it has been made for an illegal purpose. *Luton Local Board v. Davis*, 2 E. & E. 678; 29 L. J. M. C. 173; 6 Jur. (N.S.) 580; 2 L. T. (N.S.) 172; 8 W. R. 411; 24 J. P. 677.

As illustrating the principle that local authorities may not pay out of their funds any sum for a purpose not expressly authorised by statute, reference may be made to a number of cases decided with regard to the power of a corporation to defray out of the rates the expenses incurred in defending proceedings against their officers for acts done in the performance of their duty. In *Reg. v. Thompson*, 5 Q. B. 477; D. & M. 497; *Reg. v. Stamford (Town Council of)*, 13 L. J. Q. B. 177; 8 Jur. 558, it was held that a corporation could not order payment of costs of defending borough constables in a prosecution against them for acts done in the course of their duty. See also *Reg. v. Lichfield (Mayor of)*, 10 Q. B. 534; 16 L. J. Q. B. 333; 11 Jur. 888. In *Pickering v. Stephenson*, L. R. 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. (N.S.) 608; 20 W. R. 654, it was decided that a trading company could not pay out of their funds the cost of prosecuting a person for libelling the council of the company. And it was decided that the expenses incurred by an officer of a borough in defending his character in relation to matters arising out of his official duties could not lawfully be paid out of the borough fund. *Reg. v. Liverpool (Mayor of)*, 41 L. J. Q. B. 175; 26 L. T. (N.S.) 101; 20 W. R. 389. This decision was in accordance with *Attorney-General v. Compton*, 1 Y. & C. 417. When the chief constable of a borough had, by direction of borough magistrates, laid an information against a person for conspiracy, and an action for malicious prosecution was brought by such person against him, and verdict recovered for 200L., it was held that it was not competent to the council to order payment of the chief constable's costs out of the borough fund or rate. *Reg. v. Exeter (Mayor of)*, 6 Q. B. D. 135; 44 L. T. (N.S.) 101; 29 W. R. 441; 45 J. P. 158. But, on the other hand, when officers were sued for acts done on behalf of the authority, and under their direction or with their sanction, the authority might, as it seems from *Attorney-General v. Pearson*, 10 Jur. 651, pay the costs and even the damages awarded against those officers out of their funds. In *Stops v. Northamptonshire J.J.*, 4 T. L. R. 78, it was held that the justices of a county could not lawfully pay out of the county fund the costs and damages incurred by the chief constable of the county in an action brought against him in respect of acts done in the execution of his duty. It should be observed, however, that these cases were all decided before 45 & 46 Vict. c. 50, s. 226, and 51 & 52 Vict. c. 41, s. 66, which would now justify some if not all of the payments held to be illegal as above stated. But these Acts apply only to municipal corporations and county councils, and the principle of the decisions still applies to other local authorities.

When money has been *bonâ fide* paid upon an order of a town council to a town clerk, for professional business done by him as a solicitor, upon instructions given by the corporation, the mere fact of his having had no retainer under the seal of the corporation was held to be no sufficient ground why the court should, under 7 Will. 4 and 1 Vict. c. 78, s. 14, quash the order of the council as for a misapplication of the borough funds. And it was further held that costs incurred by a town council in taking legal advice as to the validity of a borough rate which they threatened to enforce, but concerning which they were threatened with litigation if they should persevere in their intention, were costs chargeable upon the borough fund. *Reg. v. Prest*, 16 Q. B. 32; 15 Jur. 554; 20 L. J. Q. B. 17; 14 J. P. 750. And see the case of *Reg. v. Norwich (Mayor of)*, *ante*, p. 242.

The application of the doctrine of *ultra vires* to the proceedings of public boards cannot be fully discussed here, and reference should be made to the work of Mr. Seward Brice on the subject. A few cases may be cited, however, to illustrate the doctrine. In *East Anglian Railway Company v. Eastern Counties Railway Company*,

11 C. B. 775, JERVIS, C.J., said: "It is clear that the defendants have a limited authority only, and are a corporation only for the purpose of making and maintaining the railway sanctioned by the Act; and that their funds can only be applied for the purposes directed and provided for by the statute." In *Bateman v. Ashton-under-Lyne (Mayor of)*, 3 H. & N. 323; 27 L. J. Ex. 458, it was held that a waterworks company having certain powers for the supply of water to a district might lawfully apply to Parliament for the extension of those powers, and consequently contract with an engineer for the supply of plans and estimates essential to such application. BRAMWELL, B., however, dissented from this judgment. See also *Stockport Waterworks Company v. Manchester (Mayor of)*, 7 L. T. (N.S.) 545; 9 Jur. (N.S.) 266; *Taylor v. Chichester and Midhurst Railway Company*, L. R. 4 H. L. 621; 39 L. J. Ex. 217; 23 L. T. (N.S.) 657; *Chatham Local Board v. Rochester Paving Commissioners*, L. R. 1 Q. B. 24; 35 L. J. M. C. 81; 13 L. T. (N.S.) 273; 14 W. R. 51; 12 Jur. (N.S.) 47; 29 J. P. 805.

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It seems to have been established by numerous decisions that when public boards take proceedings in Parliament to protect the property under their control and management, the expenses which they incur are chargeable upon the funds at their disposal; but if they originate parliamentary measures for the purpose of increasing their property or extending their powers, they must rely upon obtaining express sanction from the legislature for charging the costs upon any of their funds. It is unnecessary to enumerate the decisions in question, for the Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), which is set out in the Appendix, now enables local authorities in certain cases to charge on their funds the costs of promoting or opposing parliamentary or other proceedings for the benefit of the inhabitants. And although there may be cases in which such expenditure might be justified without the aid of this statute, it will be found in practice advisable to conform to its formalities in almost every instance. A private bill before Parliament provided for the punctual payment of interest on the share capital of the undertaking for which authority was sought by declaring that the overseers of the parish in which the undertaking was situated should, when required to do so, raise as part of the poor rate money for the payment of such interest. The overseers, with the authority of the vestry, successfully opposed the bill, and, in so doing, incurred certain expenses which were not immoderate and were allowed by the auditor. It was held, reversing the decision of the Queen's Bench Division, that the overseers were entitled to charge the expenses so incurred upon the poor rate. *Reg. v. White or Sibly*, 14 Q. B. D. 358; 54 L. J. M. C. 23; 52 L. T. (N.S.) 116; 33 W. R. 248; 49 J. P. 294. See also *Cleverton v. St. German's Rural Sanitary Authority*, cited in the notes to the Municipal Corporations (Borough Funds) Act, 1872, in the Appendix. In *Attorney-General v. Lambeth (Vestry of)*, W. N. (1888), p. 19; 4 T. L. R. 257, an injunction was granted restraining the vestry from applying their funds in promoting a bill in Parliament.

The period for which the rate is to be made is not included in the matters which must appear in the estimate. This must, however, appear in the rate itself. See *ante*, p. 290, section 211, note (u).

(c) See note (a), *supra*.

219. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate (a) made previously thereto, and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds. (b)

Rates to be
open to
inspection.

(a) This is an additional inspection to that provided for in the preceding section. On this occasion copies or extracts may be taken, but no such provision is made in respect of the previous inspection. Moreover, refusal of inspection in this case, subjects the officer to a penalty recoverable on summary conviction. No such summary remedy is given in the previous case.

See section 210, *ante*, p. 279, as to the notice to be given of the intended making of the rate.

(b) See section 251, *post*, as to the recovery of this penalty.

Section 220.

Description of owner or occupier in rates.

220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.

Notwithstanding the facility which is thus given to the urban authority, it is, nevertheless, most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings when the name of the party proceeded against is not stated. Moreover, if it can be shown that the name was known to the authority, it may perhaps be held that the use of the term *owner* or *occupier* is not justified. Again, it may well be questioned whether, although these words are used, the assessment will be available against an owner or occupier who may succeed to the premises.

Rates may be amended.

221. An urban authority may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, (a) or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated, (b) or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made, (c) and with respect to him an amended rate shall be considered to have been made at the time when he first received notice (d) of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted until seven days after such notice has been given to him.

(a) There is no such power as this in the case of a poor rate. See *Pembroke v. Wye (Overseers of)*, 47 J. P. 359. *The Sawtry School Board Election Petition: Yethard v. Turnill*, "Times," 21st May, 1895.

(b) These words raise a difficulty. These may be an under-rating or over-rating arising out of an error in computation, or of an inaccurate reference to the valuation list, and this would clearly be within the section. But it may be contended that the value is wrongly entered in the valuation list. Nevertheless, according to section 211, that list is to be followed. Can the urban authority entertain this inquiry? If they can, they can depart from the valuation list wholly or to a great extent. This is so contrary to the intention of the legislature that it is to be expected that the courts of law will not sanction it. At the same time it is not easy to see any serious ground for the appeal which is provided for by the section in respect of any other amendment. In a recent case one S. was assessed to a general district rate, and five weeks afterwards he applied to the assessment committee to reduce his assessment, and the committee did so. S. did not appeal against the general district rate. The urban authority took out a summons against him under section 256, and the justices made an order for payment of the rate as originally made. It was held that they were wrong in so doing, and that they ought to have held it a sufficient cause for non-payment, that the assessment in the valuation list had been reduced before the summons was taken out. *Sheffield Waterworks Company v. Mayor, &c., of Sheffield*, 55 L. J. M. C. 40; 34 W. R. 153; 50 J. P. 6. From this case it may be inferred that upon the alteration of the valuation list during the currency of an urban rate, the rate should be amended under this section, but

that in any event the rate can only be enforced upon the altered valuation. See also *Tynemouth Union v. Backworth Overseers*, cited in the notes to section 231, *post*.
(c) See section 269, *post*, p. 363. Doubtless a ratepayer may appeal against the reduction of another person's rate on this amendment, if he can find it out.

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Section 221.

(d) As to the authentication and service of this notice, see sections 266, 267, *post*. The customary demand note would be sufficient notice if served upon the party after the amendment.

The days will be one inclusive and one exclusive.

222. All rates made or collected (a) under this Act shall be published in the same manner as poor rates, (b) and shall commence and be payable at such time or times, (c) and shall be made in such manner and form, (d) and be collected by such persons, and either together or separately, or with any other rate (e) or tax, as the urban authority may from time to time appoint: Provided that no publication shall be required of any private improvement rate. (f)

Publication
and collection
of rates.

(a) There does not appear to be any rate collected under this Act which is not made under it.

(b) The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 99, required the rate to be published in the same manner as the poor rate. But it was decided that rates made under that section were not void if not published in the same manner as the poor rate, there being no words of avoidance in that Act as in 17 Geo. 2, c. 3, which relates to the poor rate. *Lefevre v. Miller*, 8 E. & B. 321; 26 L. J. M. C. 175; 3 Jur. (N.S.) 1255; 21 J. P. 436; 29 L. T. (O.S.) 344.

As to what publication is necessary, see 17 Geo. 2, c. 3, and the cases decided thereon in *Archbold's Poor Law*, p. 886, and *Reg. v. Wolferstan* [1893], 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. (N.S.) 429; 42 W. R. 176; 57 J. P. 452; 5 R. 561.

(c) This enables the urban authority to make a rate payable by instalments.

As regards the water rate, reference must be made to the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 50, which prescribes payment of that rate at the usual quarter days.

(d) Though the form may be prescribed by the urban authority, it is submitted that this provision does not authorise the omission of any material part such as the usual heading, as to which see *Reg. v. Wilkinson*, 2 T. L. R. 862.

(e) This must mean some other rate or tax over which the urban authority have a control. It often proves inconvenient to have several rates and taxes collected together, and therefore the authority which levies a rate ought to have exclusive power of regulating its collection. It cannot be presumed that the legislature intended that such power should be interfered with by the urban authority. Reference should be made to 25 & 26 Vict. c. 82, which provides for the consolidation of the proceedings for the recovery of several local rates and taxes due from the same person before the justices.

(f) See section 213, *ante*, p. 291. This rate is nothing more than a reimbursement of expenses incurred for the benefit of an owner of property of which he has had ample notice.

223. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *prima facie* evidence of the making and validity of the rates mentioned therein.

Evidence of
rates.

Section 262, *post*, provides that no rate shall be vacated for want of form; but if the rate show on the face of it that it is defective in substance (as if there be no estimate, or if it appear to be made for illegal purposes), it is presumed that the objection may nevertheless be taken to it with success. Hence, it is incumbent upon urban authorities to prepare their rates with proper attention and care. The text only makes the production *prima facie* evidence of the rate's validity.

224. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid

Power to
make deduc-

Section 224. down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

tion from
rate in
certain cases.

This section is difficult to apply. The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 86, provided for a special district rate in respect of the making of a sewer, and contained a proviso as in the text, which was not unreasonable. By 21 & 22 Vict. c. 98, special district rates were abolished, but the proviso was re-enacted as a substantive clause, and consequently it is inserted as above, but how the authority can carry it into effect in their general district rate is not shown. They will make the full rate and insert that amount in the book, but from this amount so formally inserted, they may deduct.

Assuming that the section can be carried into execution, though the words are discretionary, the nature of the case seems to require that they should be construed as imperative, with this qualification, that the local authority must exercise their judgment as to the amount and the period of the deduction.

Power to
reduce or
remit rates.

225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Such remission will not deprive the person of a parliamentary or municipal franchise on the ground of receiving parochial relief. *Mashiter v. Dunn*, 6 C. B. 30; 18 L. J. C. P. 13; 12 L. T. (o.s.) 197; 13 Jur. 194. Therefore presumably it will not deprive a parochial elector of the franchise for the purposes of elections of urban authorities elsewhere than in municipal boroughs or of rural authorities.

Saving for
existing
agreements.

226. Nothing in this part of this Act shall alter or affect any lease, contract, or agreement, made or entered into between the landlord and tenant of any premises.

See the similar provision in section 104, *ante*, p. 125.

By an agreement marsh lands were demised subject to a condition that the tenant should pay all outgoing, rates, taxes, costs, &c., whether parochial or parliamentary, which were and might be chargeable on the lands. An assessment was made by the commissioners of sewers for the permanent benefit of the lands, in certain proportions upon the owners and occupiers. For four years the tenant paid in the first instance both his own share and that of his landlord, and upon each half-year's settlement of accounts, for rent due, with the landlord's agent, who was ignorant of the agreement, the sum so paid was allowed towards the rent, and the receipts were given for the balance:—Held, in an action brought upon the agreement to recover the sums so allowed as arrears of rent, that the facts supported a plea of payment of the rent. *Waller v. Andrews*, 3 M. & W. 312. But if a tenant voluntarily pays taxes which he alleges ought to have been paid by the landlord and afterwards pays rent without deduction, he cannot recover the amount against the landlord. *Savinderson v. Hanson*, 3 C. & P. 314; and see *Andrew v. Hancock*, 1 B. & B. 37; *Fuller v. Abbott*, 4 Taunt. 105. In order to entitle a tenant to deduct from his rent a payment which he is entitled to deduct under a statute, the money must have been actually paid. *Ryan v. Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135. As to the rating of mines and the right to deduct one-half of the rates under section 8 of the Rating Act, 1874 (37 & 38 Vict. c. 54), see *Devonshire (Duke of) v. Barrow Hematite Steel Company*, 2 Q. B. D. 286; 46 L. J. Q. B. 96; 35 L. T. (N.S.) 474; 25 W. R. 60; *Challoner v. Bolckow*, 3 App. Cas. 933; 47 L. J. Q. B. 562; 39 L. T. (N.S.) 134; 26 W. R. 541; 42 J. P. 756.

A. demised land to B. upon a building lease, at the yearly rent of 60*l.* clear of all rates and assessments, the sewers rate and land tax excepted, with the usual covenant for payment of rent. B. having by building on the land increased its rateable value to 300*l.* per annum:—Held, that he was only entitled to deduct the sewers rate and land tax upon the original rent, and not in respect of the improved value. *Smith v. Humble*, 15 C. B. 321. And see *Watson v. Atkins*, 3 B. & Ald. 647; *Graham v. Wade*, 16 East, 29; *Watson v. Home*, 7 B. & C. 285; 1 M. & R. 191. But when a

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Section 226.

lessee covenanted that he would pay all taxes, charges, rates, tithes, &c., which then were or should at any time thereafter during that demise be taxed, charged, assessed, or imposed upon the said demised premises:—Held, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself. *Hurst v. Hurst*, 4 Ex. 571.

A landlord, liable among others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property tax excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair the said parts during the continuance of the Act; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justice's warrant was also given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to meet and make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the above-mentioned liability, made further provision as to the holding of such meetings and laying rates for the said repair:—Held, that the original liability for contribution to repairs did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and, therefore, the court finding no clause in the above statutes which extended the ultimate liability to lessees and occupiers as well as owners, that the lessee having been compelled, in the lessor's default to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor. *Baker v. Greenhill*, 3 Q. B. 148; 11 L. J. Q. B. 161.

By a local Act commissioners were authorised to flag footways, and the costs thereof were to be paid by the tenants or occupiers of the houses next adjoining. Another clause enabled the tenant to deduct the costs so paid by him out of his rent:—Held, that this charge was within the terms of a covenant in a lease subsequently made, whereby the tenant covenanted to pay all taxes, rates, duties, levies, assessments, and payments whatever, which were or during the term might be rated, levied, assessed, or imposed on the premises. *Payne v. Burridge*, 12 M. & W. 727; 13 L. J. Ex. 190.

A sewer rate is not a "parliamentary tax" within the meaning of a covenant to pay parliamentary taxes. *Brewster v. Kitchel*, 2 Salk. 615; *Palmer v. Earith*, 14 M. & W. 428.

Drainage works done upon premises under the Metropolis Management Act, 1858 (18 & 19 Vict. c. 120), were held to be payable by a lessee under a covenant to pay, bear, and discharge "all such parliamentary, parochial, county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties, and services whatsoever, as during the term should be taxed, assessed, or imposed upon or in respect of the premises or any part thereof." *Sweet v. Seager*, 2 C. B. (N.S.) 119; 3 Jur. (N.S.) 588; 5 W. R. 560; 21 J. P. 406.

By a local Act a town council were empowered to order streets to be sewered and paved by the owners of adjoining premises, and on their default themselves to do the work and charge the owners. The council were also empowered to require the tenants to pay, it being made compulsory on the owner to allow such payments to be deducted from the rent. Premises in a street were demised by the plaintiff to the defendant, the latter covenanting that he would pay and discharge all taxes, rates, duties, assessments, and impositions whatsoever (except property tax), which during the term should become payable in respect of the demised premises. The plaintiff having paid certain expenses of paving the street, sought repayment from the defendant. But it was held, distinguishing *Sweet v. Seager*, *supra*, that the payment having been made by the plaintiff, not for a rate, assessment, or imposition, which had become payable in respect of the demised premises, but for a breach of duty imposed upon him by the Act, he was not entitled to recover the amount. *Tidswell v. Whitworth*, L. R. 2 C. P. 326; 36 L. J. C. P. 103; 15 L. T. (N.S.) 574; 15 W. R. 427.

Under a covenant to pay all taxes, rates, duties, and assessments whatsoever which during the continuance of the demise should be taxed, &c., on the tenant or landlord of the demised premises in respect thereof, the tenant was held liable to pay paving

Note to Section 226. expenses under the Metropolis Management Acts. *Thompson v. Lapworth*, L. R. 3 C. P. 149; 37 L. J. C. P. 74; 17 L. T. (N.S.) 507; 16 W. R. 312; 32 J. P. 184.

A landlord's covenant to pay all rates, taxes, tithes, and all other charges payable in respect of the premises, was held not to apply to the costs of cleansing a piece of ornamental water effected under an order in execution of the Nuisances Removal Act (18 & 19 Vict. c. 121), s. 16. *Bird v. Elwes*, L. R. 8 Ex. 225; 37 L. J. Ex. 91; 18 L. T. (N.S.) 727; 16 W. R. 1120; 32 J. P. 694.

A tenant covenanted to pay all outgoings charged on the premises or on the landlord in respect thereof. A drain was made after notice served upon him by the lessee, who was in occupation under an arrangement made between the landlord and tenant, that the person held to be liable should bear the charge, and it was decided that the lessee was liable. *Crosse v. Raw*, L. R. 9 Ex. 209; 43 L. J. Ex. 144; 23 W. R. 6. But see sections 104, 214, *ante*, pp. 125, 292. This decision was followed in a more recent case. There the plaintiff demised premises to the defendant at a yearly rent "clear of all present and future rates, taxes, and deductions," and a covenant was contained in the lease that the defendant should pay the rent, and also bear and pay all the rates, taxes, and outgoings, then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, brought an action to recover them from the defendants. It was held that the omission of the word "outgoings" in the *reddendum* clause did not qualify the covenant so as to take it out of the decision in *Crosse v. Raw*, and that the plaintiff was therefore entitled to recover. *Gardner v. Furness Railway Company*, 47 J. P. 232. *Crosse v. Raw* was also approved of by the Court of Appeal in *Budd v. Marshall*, *infra*.

Tidswell v. Whitworth (*supra*) was followed, and *Thompson v. Lapworth* distinguished in *Rawlins v. Briggs*, 3 C. P. D. 368; 47 L. J. C. P. 487; 27 W. R. 138; 42 J. P. 791. There the covenant was to pay all and all manner of taxes, rates, charges, assessments, and impositions whatever, then or at any time or times during the term to be charged, assessed, or imposed, on the demised premises, or in respect thereof, or of the said rent, by authority of Parliament or otherwise whatsoever. During the term the lessor had to pay a sum in respect of the abatement of a nuisance after notice by the local authority, and it was held he could not recover from the lessee. This case should be compared with *Budd v. Marshall*, 5 C. P. D. 481; 50 L. J. C. P. 21; 42 L. T. (N.S.) 793; 29 W. R. 148; 44 J. P. 584. There the defendant was tenant to the plaintiffs, and had covenanted to "bear, pay, and discharge all taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise." The drainage having become defective, the local authority required the owners to abate the nuisance, and obtained an order from a justice to the like effect. The plaintiffs having executed the works necessary to enable them to obey the order, sought to recover the costs from the defendant under his covenant. It was held by BRAMWELL and BAGGALLAY, L.J.J. (BRETT, L.J., dissenting), that the action was maintainable. This decision was followed by NORTH, J., in the case of *In re Bettingham, Melhado v. Woodcock*, 9 T. L. R. 48, and by WILLS, J., in *Clayton v. Smith*, 11 T. L. R. 374. See also *Smith v. Robinson*, *infra*. In another case the plaintiff bought of the defendant three houses, and by the contract of sale the latter agreed to discharge "all rates, taxes, and outgoings," up to the time of completion. The purchase was completed, and afterwards payment was demanded from the plaintiffs of the expenses incurred under a local Act in improving the street in which the houses stood. The work had been done some time before the houses belonged to the defendant, and at the time of sale to him the plaintiffs knew of the charge. The plaintiffs, having paid the sum demanded, sued the defendant for repayment. It was held, distinguishing *Tidswell v. Whitworth*, that the charge for improving the street was an "outgoing" which the defendant had bound himself to discharge, and that the plaintiffs were entitled to recover. *Midgley v. Coppock*, 4 Ex. D. 309; 48 L. J. Ex. 674; 40 L. T. (N.S.) 870; 43 J. P. 683.

The defendant, on taking a house, covenanted to pay "all rates, taxes, charges, and assessments whatsoever, which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof." It was held that paying expenses under section 150 were "a charge upon the premises," or "upon a person in respect thereof," so as to entitle the lessor to recover from the defendant the amount of such expenses when paid by him. *Hartley v. Hudson*, 4 C. P. D. 367; 48 L. J. C. P. 701; 43 J. P. 784.

The lessee of a house in a new street within the metropolitan district covenanted with his lessor to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises, or upon or payable by the occupier or tenant in

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respect thereof. It was held that the proportion of the expense of paving the new street assessed on the demised house under the Metropolis Management Acts, was not a rate payable by the tenant under his covenant, as not being charged on the premises, but upon the owner in respect of the premises. *Allum v. Dickinson*, 9 Q. B. D. 632; 47 L. T. (N.S.) 493; 30 W. R. 930; 52 L. J. Q. B. 190; 47 J. P. 102.

By an agreement of lease the tenant of a house in the metropolis agreed to pay "all rates, taxes, and assessments payable in respect of the premises during the term." It was held that a sum assessed upon the owners as their proportion of the expense of paving the street upon which the premises abutted, was not a rate, tax, or assessment within the meaning of the covenant, but a charge imposed upon the owner for the permanent improvement of his property. *Wilkinson v. Collyer*, 13 Q. B. D. 1; 53 L. J. Q. B. 278; 51 L. T. (N.S.) 299; 32 W. R. 614; 48 J. P. 791. It should be noticed that in the metropolis paving expenses are not a charge upon the premises, while they are such a charge in districts subject to the Public Health Act, 1875 (see section 257, *post*). It is submitted that this is the true point of distinction between the last two cases and *Hartley v. Hudson*, *supra*.

In a lease of a shop and basement and of three rooms on the third floor of the same house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was separately supplied by a water company to the shop and basement, and was paid for by the tenant. It was held that the lessee was entitled to recover from the lessor the sum so paid, as being a rate within the meaning of the covenant. *Direct Spanish Telegraph Company, Limited v. Shepherd*, 13 Q. B. D. 202; 53 L. J. Q. B. 420; 51 L. T. (N.S.) 124; 32 W. R. 717; 48 J. P. 550.

This decision was discussed in *Badcock v. Hunt*, 22 Q. B. D. 145; 58 L. J. Q. B. 134; 60 L. T. (N.S.) 314; 37 W. R. 205; 53 J. P. 340. In that case, by a covenant contained in a lease of a warehouse in the city of London, the lessor covenanted with the lessees to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of the city of London, or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises, or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the demised premises for domestic purposes by the New River Company under the provisions of the Waterworks Clauses Act, 1847, the lessees paid the water rates due in respect of such supply, and sought to recover the same from the lessor:—Held, that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and, therefore, the lessees were not entitled to recover the same from the lessor.

By a lease of land in the metropolis the lessee covenanted that he would pay "the tithe or rentcharge in lieu of tithes, land tax (if any), sewers rates, main drainage rates, and all other taxes, rates, impositions, and outgoings whatsoever, then or thereafter to be charged or imposed on or in respect of the said premises, or on any part thereof (except the landlord's property tax)." The lessor having had to pay his share of the cost of paving a new street, sought to recover the amount from the lessee, but *MATHEW, J.*, held that the case was governed by *Tidswell v. Whitworth* and *Rawlins v. Briggs* (*supra*), and gave judgment for the defendants. *Hill v. Edward*, W. N. (1885), p. 32. This case nearly resembles *Allum v. Dickinson*, *supra*.

The lessee of a house in a new street within the metropolitan district covenanted with his lessor to pay during the term "all existing and future taxes, rates, assessments, land tax, tithe, or tithe rentcharge, and outgoings of every description for the time being, payable either by the landlord or tenant in respect of the said premises." It was held that the owner's proportion of the cost of paving the street, under 25 & 26 Vict. c. 102, s. 96, was an outgoing payable by the lessee under this covenant. *Aldridge v. Ferne*, 17 Q. B. D. 212. The court pointed out that the words of the covenant in this case were more comprehensive than in *Wilkinson v. Collyer* or *Hill v. Edward*, *supra*. A testator directed the rents and profits of a leasehold house "after payment of all ordinary outgoings for ground rent, repairs, taxes, expenses of insurance or otherwise," to be paid to his widow for life, and after her death to certain other persons. The trustees of the will upon notice from the vestry under the Metropolis Management Acts executed certain drainage works:—Held, that the cost of the works was to be paid by the tenant for life and did not constitute a charge on the corpus of the estate. *Re Crawley; Acton v. Crawley*, 28 Ch. D. 431; 54 L. J. Ch. 652; 52 L. T. (N.S.) 460; 33 W. R. 611; 49 J. P. 598. See *Re Barney*; *Harrison v. Barney*, *infra*.

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By an agreement for a lease of a house for three years at a rent of 75*l.* per annum, the tenant agreed "to pay all sewers rate, tithe rentcharge, land tax (if any), and all existing and future rates, taxes, assessments, and outgoings of every description payable by landlord or tenant in respect of the premises during the tenancy (except the landlord's property tax)." The local board made a claim upon the landlord and tenant for the amount of paying expenses apportioned in respect of the house. It was held that the words of the agreement were large enough to cover this payment, and that their meaning could not be regarded as altered because the agreement was only for a term of three years. It was held, therefore, that the tenant must pay the amount claimed by the board. *Batchelor v. Bigger*, 60 L. T. (N.S.) 416; *W. N.* (1889), p. 51.

The plaintiffs were tenants of a house in Lambeth under a lease from the defendant, by which a rent of 40*l.* was reserved "to be paid without deduction, except landlord's property tax, by equal quarterly payments, free and clear from all deductions for main drainage and sewer rates, metropolitan and local improvement rates, taxes, land tax, tithe rentcharge and commutation in lieu of tithes," and the lessees covenanted to pay "the said yearly rent of 40*l.* at the times and in manner aforesaid, free and clear of all deductions except as aforesaid," and to pay and discharge during the said tenancy all main drainage and sewer rates, &c. (following the words of the reservation). In May, 1890, the Lambeth Vestry required the defendant, as owner of the premises, to construct a drain into the common sewer under the Metropolitan Local Management Act (18 & 19 Vict. c. 120), s. 73, and the defendant not complying, did the work themselves, and recovered the costs, 17*l.* 17*s.*, from the plaintiffs under section 96 of the amending Act (25 & 26 Vict. c. 102). The plaintiffs deducted this amount from their next half-year's rent, and upon the defendant threatening to dis-train, brought this action for an injunction to restrain him. It was held that the payment in question was not within the express covenant in the lease, and the covenant to pay the rent without deduction could not be construed as a contract between landlord and tenant to exclude the tenant's right to deduct this payment from his rent under section 96 of the Act, 25 & 26 Vict. c. 102. *Home and Colonial Stores v. Tod*, 63 L. T. (N.S.) 829.

By a covenant in a lease the tenant covenanted to pay all rates, taxes, and assessments whatsoever which then were or during the said term should be imposed or assessed upon the demised premises or the landlord or tenant in respect thereof by authority of Parliament or otherwise, and also to make, uphold, support, cleanse, and repair, and keep in repair, all sewers, drains, cesspools, necessities, privies, vaults, and others easements belonging to the demised premises. The local authority served on the mortgagee in possession (as the owner) a notice requiring him to abate a nuisance arising from pumping sewage from a cesspool, and on the owner's default did the work. The owner paid the expenses under threat of legal proceedings, and brought an action to recover them from the tenant. At the trial, before A. L. SMITH, J., it was held that the tenant was not liable under either covenant. *Lyon v. Greenhow*, 8 T. L. R. 457.

A lessee covenanted to pay, bear, and discharge all land tax, sewers rate, main drainage rate, and all other rates, taxes, assessment charges, or impositions whatsoever, parliamentary, parochial, or otherwise, taxed, charged, assessed, or imposed upon the demised premises, or on the lessor for or in respect of the premises. The lessee also covenanted to repair. The lessee failed to repair, in consequence of which a drain on the premises got out of order, and caused a nuisance. The sanitary authority made an order on the lessor under the Public Health (London) Act, 1891, to abate the nuisance. The lessor incurred expense in complying with this order and sued the lessee to recover the amount:—Held, that the expenses so incurred were a charge imposed on the lessor in respect of the premises, and that the lessor was entitled to recover. *In re Bettingham*; *Melhado v. Woodcock*, *supra*, approved; *Smith v. Robinson* [1893], 2 Q. B. 53; 62 L. J. Q. B. 509; 69 L. T. (N.S.) 434; 41 W. R. 588; 58 J. P. 73; 5 R. 469; 9 T. L. R. 493.

By the will of a testator, who died in 1846, certain freehold messuages were demised to trustees, their heirs and assigns, upon trust, to permit A. and B. during their joint lives, and the survivor of them during his life, to hold the same, and receive the rents, and after the death of the survivor, upon trust for the first and other sons of B. successively in strict settlement. During the life of one of the equitable tenants for life, the trustees applied certain capital moneys held by them upon similar trusts in payment of expenses incurred for drainage works in respect of

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the demised messuages which were without sufficient drains as specified in the Public Health Act, 1848, s. 49 :—Held, that the trustees were “owners” within the meaning of that Act, and had rightly paid the drainage expenses in question out of the capital moneys ; but that as between the tenant for life and the remainderman the capital moneys so applied must be treated as a charge upon the messuages. By a clause in his will the testator declared that the parties beneficially entitled to the rents and profits of any of his houses should keep the same in good and absolute repair :—Held, that these drainage works were not repairs within the meaning of that clause. *Re Barney ; Harrison v. Barney* [1894], 3 Ch. 562 ; 63 L. J. Ch. 676 ; 71 L. T. (N.S.) 180 ; 43 W. R. 105.

In *Butcher v. Ruth*, 22 L. R. Ir. 380, it was held that expenditure by a tenant in abating a structural nuisance, after notice to abate served on the tenant only, could not be set off by him against rent due to his landlord. But it does not appear to follow that the tenant cannot recover such expenses. Thus, in *Gebhardt v. Saunders* [1892], 2 Q. B. 452 ; 67 L. T. (N.S.) 684 ; 56 J. P. 741 ; 40 W. R. 571, a nuisance having arisen in a house, the sanitary authority served a notice addressed simply to the owner or occupier upon the tenant requiring him to abate the nuisance, and the tenant executed the necessary works. During the progress of the works it was discovered that the nuisance arose from a defect of a structural character in the drains of the house. The tenant brought this action to recover the amount of expenses from the landlord. On the part of the latter it was contended that he was not liable, inasmuch as the defect being of a structural character, the notice ought to have been served on him, and not on the tenant, and the tenant was under no legal liability to execute the work. It was held that upon the construction of sub-section (1) of section 4, it was clear that if the cause of a nuisance could not be found on inspection it was right to serve the notice on the occupier ; that the tenant was legally liable to execute the necessary works, and that the notice being in fact an order, and the defect being one of a structural character, the tenant, upon the construction of sections 4 and 11, was entitled to recover the amount of the expenses of the works from the landlord. And see a similar decision under the Metropolis Management Acts. *Castleberg v. Kenyon*, “Times,” 16th June, 1879.

The respective liabilities of landlord and tenant in respect of nuisances on the demised premises have been already noticed. See the notes to section 94, *ante*, p. 116.

227. Any limit imposed on or in respect of any rate by any local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act. Limit in local Act not to apply to rate for purposes of this Act.

It was held that the corresponding section in 35 & 36 Vict. c. 79, s. 43, did not affect exemptions from assessment under a local Act. *Walton (Overseers of) v. Walford*, L. R. 10 Q. B. 180 ; 44 L. J. Q. B. 74 ; 31 L. T. (N.S.) 825 ; 23 W. R. 292 ; 39 J. P. 183.

By a local Improvement Act, it was provided that no borough rate levied hereafter should exceed in any year the sum of 1s. in the £, provided that, with the consent of a majority of the persons liable to be rated thereto, the corporation might increase such rate above the amount by the Act limited. The Act further provided that no such increase should be leviable upon the owner or occupier of any coal mine in respect thereof, or upon any person assessable in the proportion of one-fourth only of any rate, other than the highway rate, in respect of his property or of premises occupied by him :—Held, that this was not an exemption of property from liability, but a limit imposed on the borough rate leviable upon colliery and certain other property ; that though the limit still existed so far as any rate leviable by the corporation for borough purposes was concerned, the provision in the text prevented its applying to rates leviable by the corporation for the purposes of the Public Health Act, 1875, and that the corporation were unrestricted in the amount of any rate leviable by them thereunder. *St. Helen's (Corporation of) v. St. Helen's Colliery Company*, 48 J. P. 39. A provision in a local Waterworks Act that the rates should not exceed so much in the pound was held to be superseded by the corresponding section of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 227. *Reg. v. Wexford (Corporation of)*, 18 L. R. Ir. 119.

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Quota of
rates to be
paid by the
universi-
ties, &c.

228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching, repairing, lighting, and cleansing, under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act.(a)

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities, halls, and colleges, in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

(a) See section 179, *ante*, p. 250. See also the notes to section 342, *post*, and to 51 & 52 Vict. c. 41, s. 52, *post*.

EXPENSES OF RURAL AUTHORITY.

Expenses of
rural autho-
rity.

229. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act)(a) shall be the expenses of the establishment and officers of the rural authority,(b) the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act(c) or by order of the Local Government Board(d) to be special expenses.

Special expenses shall be the expenses of the construction, maintenance, and cleansing of sewers in any contributory place(e) within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act,(f) the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board(g) to be special expenses.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such

apportionment, (*h*) may within twenty-one days after notice (*i*) has been given to them of the apportionment, send or deliver a memorial (*k*) to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned. (*l*)

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district (*m*) according to the rateable value of such contributory place in manner in this Act mentioned. (*n*)

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act ; that is to say,

- (1.) Every parish (*o*) not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts (*p*) or of this Act, or of an urban district ; and
- (2.) Every such special drainage district as aforesaid ; and
- (3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district ; and
- (4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

(*a*) These are such expenses as are made recoverable from owners of premises, for example, under sections 23, 98, and similar sections.

(*b*) These are such officers as are, in addition to the ordinary staff of the board of guardians, appointed for sanitary purposes. It seems that the remuneration of the clerk and treasurer under section 190, *ante*, p. 263, should be included under the head of general expenses.

(*c*) The expenses of the rural district council for highway purposes are to be defrayed as general expenses. See the Local Government Act, 1894, s. 29, *post*. The next paragraph specifies the expenses which the Act determines to be special expenses.

Where a rural authority obtained urban powers under the first paragraph of section 161, *ante*, p. 224, it was held that their expenses in the execution of such powers were general expenses. *Lancashire and Yorkshire Railway Company v. Bolton Union*, *ante*, p. 225.

The plaintiff brought an action against the defendants, who were a rural sanitary authority, to restrain them from fouling a stream, and in 1885 recovered judgment against them with costs. The costs were not taxed until 1890. In 1891, the costs not having been paid, the plaintiff sued out a writ of *elegit* under which an inquisition was taken, and the sheriff delivered in execution to the plaintiff certain lands which had been acquired by the defendants for the purpose of sewage works in the parish of N., a contributory place within their district, by means of money borrowed on the security of the separate rates of that parish. Upon motion by the defendants to set aside the writ and inquisition, it was held that the lands in question were held by the defendants on trust for the parish of N., and could only be taken in execution for judgment debts exclusively chargeable against that place ; that the costs of the action were "general expenses" not chargeable against that place or the separate funds levied within it, but against the common fund of the district ; and that the judgment could only be enforced against property which had been acquired by means of that common fund. It was also held that the writ and inquisition being

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quite regular, the motion to set them aside was wrong in form ; but that under the circumstances the court would, in the exercise of its discretion, under section 24 (5) of the Judicature Act, 1875, order all further proceedings under the writ and inquisition to be stayed. *Jersey (Earl of) v. Uxbridge Rural Sanitary Authority* [1891], 3 Ch. 183 ; 60 L. J. Ch. 833 ; 64 L. T. (N.S.) 858 ; 7 T. L. R. 568.

(d) In districts where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), has been adopted, the Local Government Board may by order on the application of any rural authority declare any expenses incurred by such authority to be special expenses. See section 49 of that Act and the note thereto, *post*. See also section 29 of the Local Government Act, 1894, referred to in note (f) to the next section, *post*, p. 312. To obtain this order the board of guardians should submit upon foolscap folio paper a statement of the expenditure, the purpose for which it was incurred, and the grounds of their application. The Local Government Board have issued many orders for this object when they have been satisfied that the expenditure was clearly for a local purpose or with a view to local benefit.

(e) A contributory place is described later on in the section. Between 1874 and 1879 some parishes in the W. union were sewered. The treasurer paid cheques from time to time for the expenses up to 1879, charging the amount to each parish, when the sums amounted to 831l. This balance was carried forward each half-year until 1883 and passed the auditor, and then was apportioned, the share of parish B. being 280l. A rate was then made on parish B. for this sum under section 230 (*post*). S. appealed against the rate as being bad on the ground of retrospectiveness, and it was held on a case stated that the rate was bad for this reason. *Saul v. Wigton Rural Sanitary Authority*, 50 J. P. 788. But see *Caistor Union v. North Kelsey (Overseers of)*, 59 L. J. M. C. 102 ; 62 L. T. (N.S.) 731.

(f) See section 57, *ante*, p. 83, with respect to the levying and recovery of water rates. It is to be observed that when the supply has been provided, water rates or rents are to be obtained, and so far as the amount so obtained is deficient to meet the charges on the authority for such supply, a precept for special expenses must be issued. See also the Public Health (Water) Act, 1878, *post*.

The question has arisen whether parliamentary expenses incurred in the procuring or opposing water bills are within the words *providing a supply of water*. The better opinion appears to be in the negative. But the expenses incurred by the authority in and about the obtaining of a provisional order for the acquiring of water rights or land for a reservoir appear to be within these words. Section 297 deals with provisional orders. It has been held that the repairing of a public well was a work for which the rural authority might issue a precept for special expenses. *Witney v. Wycombe Union*, 40 J. P. 149.

(g) See note (d) *supra*. This order is conclusive. See section 295, *post*.

(h) This is a singular provision, seeing that according to the terms of the preceding paragraph, the rural authority are to apportion as *they think just*.

(i) See sections 266, 267, *post*, as to the authentication and service of this notice.

(k) This memorial should be on folio foolscap paper, addressed to the President under cover to the Secretary. It will suffice if signed by the overseers, though it may be supported by the signatures of a few ratepayers. It is not necessary that there should be many.

(l) See also section 295, *post*. It is to be noticed that no appeal is given against the order of the Local Government Board in this matter.

(m) The district is so much of the union as is not included in an urban sanitary district. See section 9, *ante*, p. 27.

(n) The next section describes the manner in which this fund is to be raised.

(o) See the definition in section 4, *ante*, p. 4.

(p) These districts were formed under 29 & 30 Vict. c. 90, ss. 5, 7 ; 30 & 31 Vict. c. 113, ss. 7, 9 ; and 33 & 34 Vict. c. 53, ss. 3, 4. Such districts may be formed hereafter under section 277, *post*, p. 378.

Mode of
raising con-
tributions
in rural
district.

230. For the purpose of obtaining payment from the several contributory places(a) within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to some person appointed by them,(b) care being

taken to issue separate precepts in respect of contributions for general expenses and special expenses or to make such expenses respectively separate items in any precept including both classes of expenses.(c) Section 230.

Where a contributory place is part of a parish as defined by this Act,(d) the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish(e) the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contributions required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate(f) in the same manner as if it were a rate for the relief of the poor, with this exception ; (namely,)

That the owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance,(g) shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value(h) thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property :(i)

Provided that where the amount required by any precept or precepts(k) from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses.

A separate rate under this section shall, as respects the powers of the overseers in relation to making, assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof(l) except the purposes to which it is applicable, and such exemption as aforesaid,(m) and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor ; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.(n)

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time(o) to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup

Section 230. the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, *(p)* or by a separate rate to be assessed, made, allowed, *(q)* published, collected, and levied in the same manner as a poor rate. *(r)* The officers ordinarily employed in the collection *(s)* of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine. *(t)*

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority. *(u)*

(a) See the last section.

(b) This should be the treasurer of the rural authority.

(c) It is desirable, as far as possible, to include all in one document. There will thus be a saving in many respects of labour and expense. But the sums must be kept distinct. See *Jersey (Lord) v. Uxbridge Union*, *ante*, p. 310.

(d) See the definition in section 4, *ante*, p. 4.

(e) This may be explained as follows. The contributory place may be formed out of parts of two parishes. In that case it seems that the overseers of the two parishes respectively will be the overseers of the respective parts for the purpose of raising these expenses.

(f) It is provided by the Local Government Act, 1894, s. 29, *post*, that when the Local Government Board determine any expenses under that Act to be special expenses, and a separate charge on any contributory place, and such expenses would, if not separately chargeable on a contributory place, be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in this section.

(g) These are the same exceptions as are contained in section 211, *ante*, p. 282. The notes on that section should be referred to for the elucidation of the present section.

The exemption was extended to orchards by 52 & 53 Vict. c. 17, *post*, and to allotments by 54 & 55 Vict. c. 33, *post*.

(h) In the former section the term is *net annual value*, which is defined in section 4, *ante*, p. 11, under the word *rack-rent*. There is no definition in the Act of *rateable value*, but the two phrases have the same meaning, being, in fact, convertible terms.

A provisional order of the Local Government Board confirmed by a local Act provided that the expenses incurred by the joint board for the district should be defrayed out of a common fund to be contributed by the component districts in manner provided by section 283 of the Public Health Act, 1875, and that the contributions of certain of the component districts should be contributed and raised as if they were required to defray "special expenses" within the meaning of the Public Health Act, 1875. It was held on a special case, that the joint board should apportion the contributions of the component districts according to the rateable values of the properties in such districts, to be ascertained according to the valuation list, and that the rateable values of tithe, tithes commutation, rentcharges, land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, or covered with water, or used as a canal or towing-path, or as a railway, should be taken at the full value appearing in the valuation list, and not at one-fourth thereof. *Darenth Main Valley Sewerage Board v. Dartford Union*, 19 Q. B. D. 270; 57 L. T. (N.S.) 233; 36 W. R. 43.

Note to
Section 230.

(i) This refers to the poor rate. There is great difficulty in dealing with a hereditament consisting of house and land where the valuation list does not sever the value of each. Where a valuation has been made under the Union Assessment Committee Act, 1862, the valuer ought, according to 27 & 28 Vict. c. 39, s. 4, to show the particulars of his valuation, and the respective values of such particulars. Where this has been done the separate values of the house and land can be obtained.

As to the assessment of tenements separately occupied though forming part of one building, see *Allchurch v. Hendon Union* [1891], 2 Q. B. 436; 61 L. J. M. C. 27; 65 L. T. (N.S.) 450; 40 W. R. 86; 56 J. P. 117; 7 T. L. R. 634.

(k) These plural words appear to contemplate that several precepts may be issued so as to be outstanding at the same time. Nevertheless, if the whole of the sum required be of the limited amount stated in the text, no special rate can be made. Where this proviso is acted on and no separate rate is made the exceptions as to rating at one-fourth only of the rateable value do not apply. *Sheffield (Mayor, &c., of) v. Bradford Union Assessment Committee*, 7 T. L. R. 571.

(l) A question has been asked whether the term *incidents* includes the reductions allowed by 32 & 33 Vict. c. 41. The word was found in 30 & 31 Vict. c. 113, which was passed before that Act, and it might therefore appear that the provisions of 32 & 33 Vict. c. 41, did not apply. On the other hand, there seems to be no reason why an *incident* of the poor rate should not apply to a rate made under this section, even although such incident has been created since the passing of the Act in which it was first used. A rate made under this section must not be retrospective. See *Saul v. Wigton Rural Sanitary Authority*, 56 L. T. (N.S.) 438; 51 J. P. 406; 35 W. R. 252. But see *Easton v. Nar Valley Drainage Commissioners*, 8 T. L. R. 649.

(m) That is, the reduction in the amount of the assessable value. 35 & 36 Vict. c. 79, s. 18, referring to 30 & 31 Vict. c. 113, described these allowances as exemptions.

(n) See note (g), *supra*.

(o) The words "from time to time" ought not to be so construed as to throw upon the ratepayers for one year what ought to have been borne by their predecessors. See per BLACKBURN, J., in *Market Harborough and Brompton Turnpike Trustees v. Kettering Highway Board*, L. R. 8 Q. B. 308; 42 L. J. M. C. 137; 28 L. T. (N.S.) 446; 21 W. R. 737; 37 J. P. 551.

(p) It is difficult to see how this can be carried out, except by including the amount in the ordinary estimate for that rate.

(q) This separate rate must be allowed by the justices, though the separate rate in the previous part of the section is free from that requisition.

(r) The exemption previously referred to (m) is not referred to here. *Quere* whether it can be implied.

(s) Note, it is the collector who is to be employed, not an assistant overseer who is not engaged in the collection. The officers referred to cannot, as it appears, decline to collect the rate if required to do so, but they are to be remunerated, and can compel the overseers to remunerate them.

(t) These words supply a defect in 35 & 36 Vict. c. 18, which omitted to declare whence the remuneration was to come. Care must be taken to ascertain whether the securities given by the officers will apply to this collection.

(u) Unless the rural authority appoint the succeeding overseers to receive it, the surplus must not be paid to them. In default of any order of the rural authority, it must be paid to their treasurer, to be applied, however, as in the text mentioned.

231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof.

Remedy for
non-payment
by overseers
of amount
required
by precept
of rural
authority.

That is, of the amount claimed in the precept.

As to the provisions for recovery, see 2 & 3 Vict. c. 84, s. 1; 12 & 13 Vict. c. 103, s. 7; and 14 & 15 Vict. c. 105, s. 9.

**Note to
Section 231.**

The procedure is as follows :—Application is made under the hand of the chairman of the sanitary authority for a summons to show cause. At the hearing of the summons if cause is not shown the justices issue their warrant for the amount in arrear and costs, which is levied upon the overseers as in the case of a warrant for poor rates.

The overseers of the town of B. paid the guardians of T. union contributions on the basis of a valuation list afterwards found by arbitration to be excessive. On the overseers refusing to pay the amount of two subsequent precepts issued by the guardians on the ground that they had already paid too much on the excessive valuation list, and were entitled to be credited with the surplus, the guardians applied to justices for a distress warrant to enforce their precepts. The justices refused to grant a warrant. On a case stated it was held that the justices had a discretion as to granting the warrant and had exercised it properly. It was held also that the overseers were entitled to be credited on the precepts now in question with the amounts previously overpaid under the incorrect valuation list. *Tynemouth Union (Guardians of) v. Backworth (Overseers of)*, 57 L. J. M. C. 53; 59 L. T. (N.S.) 178; 52 J. P. 357.

Though the amount of the precept cannot be disputed, it is probably open to the overseers to dispute the validity of the precept itself before the justices. See *Newbould v. Coltman*, 6 Ex. 189; 20 L. J. M. C. 149; 15 J. P. 372; *Pedley v. Davis*, 30 L. J. C. P. 374; 10 C. B. (N.S.) 492; 8 Jur. (N.S.) 263; 5 L. T. (N.S.) 253; 26 J. P. 343; *Waddington v. City of London Union*, E. B. & E. 370; 28 L. J. M. C. 113; 32 L. T. (O.S.) 225; 5 Jur. (N.S.) 242; 22 J. P. 367, 703, 755; *Witney v. Wycombe Union*, ante, p. 310. It should be stated, however, that the justices have not an arbitrary discretion to grant or withhold the process. *Reg. v. Boteler*, 4 B. & S. 959; 33 L. J. M. C. 101; 28 J. P. 453; S. C. *Ex parte Bridgend and Cowbridge Union (Guardians of)*, 9 L. T. (N.S.) 720.

As to private improvement expenses.

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.

See sections 213—215, ante, pp. 291—293. It does not appear that such expenses are general or special expenses. Nevertheless, unless the rural authority borrow money and charge it on these improvement rates, they must use the money in their treasurer's hands, applicable to sanitary purposes, so far as can be discriminated.

BORROWING POWERS.(a)

Power to borrow on credit of rates.

233. Any local authority may with the sanction of the Local Government Board, (b) for the purpose of defraying any costs, charges, and expenses incurred (c) or to be incurred by them in the execution of the Sanitary Acts (d) or of this Act, (e) or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by

or on behalf of whom such sums are advanced any such fund or rates or rate.^(f) Section 233.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable,^(g) and if applied or intended to be applied to special expenses of such authority on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund, rate or rates.^(h)

(a) In connection with this part of the Act reference should be made to the following Acts, which are printed in the Appendix, in so far as they are not repealed or relate only to local matters :—The Local Authorities Loans Act, 1875 (38 & 39 Vict. c. 83) ; The Public Works Loans Acts, 1875 to 1894 (38 & 39 Vict. c. 89) ; 39 & 40 Vict. c. 31 ; 41 Vict. c. 18 ; 42 & 43 Vict. c. 77 ; 44 & 45 Vict. c. 38 ; 45 & 46 Vict. c. 62 ; 46 & 47 Vict. c. 42 ; 50 & 51 Vict. c. 37 ; 51 & 52 Vict. c. 39 ; 55 & 56 Vict. c. 61).

(b) Sir John Lambert, Secretary to the Local Government Board, in his evidence before the Committee of the House of Commons, in 1875, upon “The Public Works Loans Bill, 1875,” gave the following information as to the course of proceeding of that Board in the matter :—“The local authority, requiring a loan, make an application to the Local Government Board for their sanction ; the Board then send down to the local authority certain printed forms to be filled up, one of the forms showing the amount of indebtedness, and the rateable value and other financial particulars. The next step which is taken by the Local Government Board is to send down an inspector to hold a local inquiry after a public notice. At that inquiry any person interested in the district is allowed to appear and be heard, and after the inspector has completed his inquiry, he makes a report to the Board, who consider the matter, and if they are satisfied that the circumstances are such as to justify their sanction, then they give it. If a locality apply for a recommendation to the Public Works Loan Commissioners, and the Board are of opinion that a recommendation can properly be given, for the advance of an amount at a reduced rate of interest under the Act of 1872 (now under section 243, *post*), then they may make a recommendation to the Public Works Loan Commissioners accordingly.” The application may be made by the clerk of the local authority in a letter upon foolscap folio paper, addressed to the President, under cover directed to the Secretary, containing a succinct account of the object of the application and the ground upon which it is made. All accompanying documents and details should, as far as possible, be transmitted upon similar material.

The local authority cannot borrow without the previous sanction of the Local Government Board. A loan without such sanction would be void. See *In re Sheffield Permanent Building Society, Ex parte Watson*, 21 Q. B. D. 301 ; 57 L. J. Q. B. 609 ; 59 L. T. (N.S.) 401 ; 36 W. R. 829 ; 52 J. P. 742.

(c) Though it is advisable that the loan should be obtained in advance of the works, this is not absolutely necessary. The costs and charges may have been incurred before the loan is obtained ; but the Board must not be expected to sanction a loan for expenses long since incurred, though no positive limit has been laid down.

The guardians of a union being authorised to raise 6,000*l.* by loan, advertised for tenders and received six, and accepted one offer which was from an agent offering the sum at a certain interest and charge for commission. The guardians paid by cheque 50*l.* commission. The auditor disallowed 38*l.* 10*s.*, part of the commission, and surcharged one of the guardians with that sum as having been illegally paid. It was held that the auditor was wrong as there was no rule against paying a commission if in the circumstances the terms were the most advantageous to the rate-payers. *Reg. v. Haslehurst*, 51 J. P. 645.

(d) See the definition in section 4, *ante*, p. 21. This section does not apply to money borrowed under any local Act, though for sanitary purposes. Where sanitary purposes to which this Act applies are provided for in any local Act, it is, nevertheless,

Note to Section 233. less, competent for the authority, as it seems, to use the powers of this Act for their loans instead of their local Act, observing, however, that this Act does not appear to enable them to re-borrow to pay off loans contracted under the local Act.

(e) With this Act must now be read the amending Acts, *e.g.*, the Public Health (Water) Act, 1878, the Public Health (Interments) Act, 1879, and the other Acts which are to be construed as one with this Act. These Acts are all set out hereafter in this work. It should be observed that a local authority has no power to borrow except for a purpose which falls within this description. See *Wenlock (Lady) v. River Dee Company*, 10 App. Cas. 354 ; 54 L. J. Q. B. 577 ; 53 L. T. (N.S.) 62 ; 49 J. P. 773 ; and *Wenlock (Lady) v. River Dee Company* (No. 2), 38 Ch. D. 534 ; 57 L. J. Ch. 946 ; 59 L. T. (N.S.) 485.

(f) For the most part the subject to be charged is some rate or fund derived from rates. Municipal corporations in some cases have corporate property, and, perhaps, that can be charged for some of the purposes of this Act. In section 235, *post*, it will be seen that land obtained for sewage purposes may be mortgaged.

As to whether a mortgage of the district fund and rates creates any charge on surplus lands of the local authority, which should under section 175, *ante*, p. 244, be sold, see *In re Thompson* ; *Bedford v. Teal*, 45 Ch. D. 161 ; 59 L. J. Ch. 689 ; 63 L. T. (N.S.) 471 ; 39 W. R. 50 ; 6 T. L. R. 394.

(g) See section 229, *ante*, p. 308.

(h) Thus, for sewage work or for water supply, the special rate may be charged, and for private improvements the private improvement rate is to be charged. One result of this is that property purchased out of money borrowed on the credit of a separate rate cannot be taken in execution for a debt properly payable out of general expenses. *Jersey (Lord) v. Uxbridge Union* [1891], 3 Ch. 183 ; 60 L. J. Ch. 833 ; 64 L. T. (N.S.) 858 ; 7 T. L. R. 568.

Regulations
as to exercise
of borrowing
powers.

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations ; (namely,)

- (1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years) : (a)
- (2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts (b) and this Act, in the whole the assessable value for two years (c) of the premises assessable within the district in respect of which such money may be borrowed :
- (3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry (d) and reported to the said board :
- (4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, (e) determine in each case ; (f) and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities, (g) such sum as will with accumulations in the way of compound interest be sufficient, after pay-

ment of all expenses, to pay off the moneys so borrowed within Section 234. the period sanctioned :

- (5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established : ^(h) Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied :
- (6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses, ⁽ⁱ⁾ or expenses in respect of which they have determined a part only of the district to be liable, ^(k) it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, ^(l) the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

(a) This term, *permanent works*, is left unsettled, but the rule by which the Local Government Board has been guided has been to consider the period for which the works may be expected to last, and to sanction a loan for that term, so that if the works will last for ten years, to sanction a loan for that term. This is a liberal interpretation of the phrase *permanent works*.

For reservoirs of water, extensive sewerage works, the purchase of land, and the establishment of gasworks, the Board sanction a long term of years, but for paving of streets, for the purchase of heavy engines or machinery, or the erection of slight buildings, a short term only is generally allowed.

(b) See the definition in section 4, *ante*, p. 21. No reference is here made to the balances of loans obtained under local Acts.

(c) The practice which has been adopted in carrying into effect the previous enactments of this provision has been to take the current year's rateable value and double it, and not to take the present and the past year's assessment and add them together. The term *assessable* refers to the rate to be charged with the loan—namely, in general, the *district rate*. Consequently the value is to be taken from the current valuation lists. It is to be observed that it is not the amount of the rate actually raised which is referred to. When the rate is the general district rate, the assessable value of the properties enumerated in sub-section (1) (b) will be one-fourth of their value, as stated in the valuation list. The term "assessable value for two years" is a little ambiguous ; but probably it means twice the assessable value at any given time.

(d) See section 293, *post*, as to these inquiries. Under 21 & 22 Vict. c. 98, s. 78, a provisional order, to be confirmed by Parliament, was required for loans when the year's assessable value was exceeded. The sanction of the Local Government Board was substituted by 37 & 38 Vict. c. 49, and this is continued in the text.

(e) The Board are guided by a consideration of the nature of the works, the existence of undischarged loans, the character of the district, and special local conditions in prescribing the term of years for the loan, and rarely accede to this maximum. It is to be observed that after the expiration of the prescribed period, the local authority will have no power to make a rate for the purpose of paying any part of the money

Note to Section 234. borrowed. See *Reg. v. Wigan (Churchwardens of)*, 1 App. Cas. 611; 35 L. T. (N.S.) 381; 25 W. R. 128; 41 J. P. 132.

(f) As to loans borrowed under previous sanitary Acts, see section 321, *post*.

(g) These limits of investment have now been extended by section 7 of the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), whereby it is enacted that where any urban or rural sanitary authority are authorised or required to invest any money for the purpose of a loans fund or a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities in which trustees are authorised by this Act to invest, except that such authority shall not by virtue of this section invest in any stocks, funds, shares, or securities, issued or created by themselves, nor in real or heritable securities: Provided that it shall not be lawful for any such authority to retain any securities which are liable to be redeemed at a fixed time at par or at any fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption. For the investments authorised by the above Act are now substituted the investments authorised by section 1 of the Trustee Act, 1893 (56 & 57 Vict. c. 53), set out in the Appendix, *post*.

A local Act, obtained by the municipal council of the borough of Belfast, enacted that the council might from time to time borrow any sum which, together with any previous loan, should not exceed 150,000*l.*, on the credit of the rates authorised to be raised by that Act, and directed that the council should appropriate out of the annual rates a proportion upon the amount borrowed, and should apply the same either to the gradual extinction of the debt, or to the formation of a fund to be accumulated for its discharge; and that it should be lawful for the council to invest the fund to be so accumulated in the public stocks or in Government or real securities. The council appropriated a yearly sum, and permitted it to accumulate as a sinking fund; but instead of investing the amount in any of the securities specified, they directed the treasurer of the borough to place it upon loan in a private bank, of which he was director, and on behalf of which he claimed a lien on the sum as against an advance made to the council on some overdrawn accounts. It was held that it was the duty of the council, as they had not paid off any portion of the debt, to have formed a sinking fund in the manner and for the purpose mentioned in the Act; and the treasurer and the other members of the corporation were ordered to make good the amount with interest and to invest it in stock, and transfer the same to the credit of the cause. *Attorney-General v. Mayor, &c., of Belfast*, 4 Ir. Ch. Rep. (N.S.) 119.

(h) But what if they apply it to any other purpose? The legislature has not given in this Act to the Local Government Board the power of supervision over this sinking fund which, for some time past, has been introduced in local Acts, where borrowing powers are conferred upon sanitary authorities, in regard to which the Board have issued a general order, dated February 27th, 1875. Doubtless, reliance is placed upon the action of the auditor, who is required to see that the requirements of the law are duly executed. It would appear from such cases as *Reg. v. St. Michael's, Pembroke*, 5 A. & E. 603, and *Reg. v. St. Michael's, Southampton*, 6 E. & B. 807, that the local authority might be compelled by *mandamus* to set aside moneys to satisfy the requirements of this section.

(i) See section 213, *ante*, p. 291. The text appears to assume that the authority will borrow money and charge it upon their general district rate, though it is only required for special application. See, however, the second paragraph of section 233, *ante*, p. 314.

(k) See section 211, sub-section (4), *ante*, p. 314.

(l) This is an indefinite provision. It is doubtful whether any legal obligation can arise out of it.

Power to borrow on credit of sewage land and plant.

235. Where any local authority are possessed of any land, works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands, works, or other property, and may mortgage such lands, works, or other property, to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands, works, or other property so mortgaged. (a) The moneys so bor-

rowed shall be applied for purposes for which moneys may be borrowed under this Act; (b) but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof. Section 235.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on the local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section. (c)

(a) This is a provision only recently introduced into the general sanitary law, though it had been sanctioned in several local Acts, and is not altogether unknown in reference to municipal corporate property.

A mortgage of land under this section appears to be an interest in land within the Mortmain Acts, and consequently will not pass under a will for charitable purposes. See and compare *Buckley v. Royal National Lifeboat Institution*, 43 Ch. D. 27; 59 L. J. Ch. 87; 62 L. T. (N.S.) 141; 38 W. R. 162; 6 T. L. R. 42; *Re Yerbury's Estate*, *Ker v. Dent*, 62 L. T. (N.S.) 55; *In re Thompson*; *Bedford v. Teal*, ante, p. 316; *In re Holmes*, 60 L. J. Ch. 267; 63 L. T. (N.S.) 477; *In re Parker*, *Wignall v. Parker*, [1891], 1 Ch. 682; 60 L. J. Ch. 195; 64 L. T. (N.S.) 257; 39 W. R. 346. Debenture stock of a municipal corporation charged upon its general revenues, though in part derived from landed property, has been held not to be an interest in land within the meaning of section 4 of the Mortmain and Charitable Uses Act, 1888. *Re Pickard*; *Emsley v. Mitchell* [1894], 3 Ch. 704; 64 L. J. Ch. 92; 71 L. T. (N.S.) 558.

(b) It must be observed here that the charge is to be upon the sewage property, and is thus in accordance with 35 & 36 Vict. c. 79, s. 41, but the money to be borrowed is not confined to sewage purposes. It may be applied to any purpose authorised by the Act.

The mortgage referred to is not limited as to time. It may or may not be made redeemable, but apparently it will be open to the mortgagee, in default of express stipulation to the contrary, to require payment at any time, and in default of payment to foreclose.

The power hereby granted is free from the control of the Local Government Board, as their consent to its exercise is not required.

(c) Although this section refers to the interest only, it seems to be implied that the local authority may pay off the principal, if so minded, out of the rates.

236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect. Form of mortgage.

See Form H., which, however, is only the form of a mortgage of rates, not of the land or works referred to in the last section. Mortgages made prior to 35 & 36 Vict. c. 79 were free from stamp duty, but since that Act there has been no exemption.

Mortgages previously secured upon rates under the sanitary Acts, and upon land under 35 & 36 Vict. c. 79, s. 41, are continued in force by section 343, *post*.

It is convenient in this place again to refer to the Local Loans Act, 1875 (38 & 39 Vict. c. 83), which is printed in the Appendix. It provides greater facilities to local authorities for borrowing money to be secured by debentures, debenture stock, and annuity certificates.

Where an officer of a local authority fraudulently obtained money on a mortgage of rates to which he had affixed the seal of the board, the board were held not liable to repay the money, as the officer's fraud was for his own benefit, not for that of the local authority, as the negligence of the local authority in permitting him to have custody of the seal was not the proximate cause of the loss of the money, and as there was no evidence that the local authority had held out the officer as having authority to borrow money. *Crapp v. East Stonehouse Local Board*, 5 T. L. R. 501.

Section 237.

Register of
mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. (a) Every such register shall be open to public inspection during office hours at the said office, without fee or reward ; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds. (b)

(a) The duty to register any mortgage is presumably upon the local authority. It may, therefore, be inferred that the total omission to register, or any delay in the registration, will not invalidate the creditor's claim, at least if he has tendered his deed for registration.

(b) As to the recovery of this penalty, see section 251, *post*.

Transfer of
mortgages.

238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer ; and such transfers may be according to the form contained in Schedule IV. to this Act, or to the like effect. (a)

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer ; and until such entry is made the local authority shall not be in any manner responsible to the transferee. (b)

On the registration of any transfer the transferee, his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby ; and any transferee may in like manner transfer his estate and interest in any such mortgage ; and no person except the last transferee, his executors or administrators, shall be entitled to release or discharge any such mortgage or any money secured thereby. (c)

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds. (d)

(a) See Form I. in the Schedule. It would appear that in order to secure the stamp the consideration must be stated and stated truly, but whether the transfer would be avoided by an error or omission may be doubted.

(b) This provision is new. The section does not prohibit registration after the specified period of thirty days, nor does it invalidate the transfer if not registered within the time. But until registration the local board are not bound to recognise the transfer. As regards the arrival in the United Kingdom of a transfer executed abroad, there must necessarily be some doubt as to the time in many cases.

(c) These securities become of the nature of negotiable instruments, and cannot be impeached in the hands of *bonâ fide* holders, though the local authority may have issued them improperly. A board of commissioners empowered by their private Act to borrow money and issue debentures chargeable on their local rates, contracted with one of themselves that he should supply bricks for their works, and he having done so, they gave him debentures purporting to be for money advanced, and such debentures

tures were duly transferred by him to *bonâ fide* holders for value. The supply of the bricks by him was contrary to the provisions of the Act. It was held that whatever might be the case as between him and the Commissioners, they were estopped by the debentures from setting up the illegality as an answer to the demands of the transferees. *Webb and Others v. Herne Bay (Commissioners of)*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221; 22 L. T. (N.S.) 745; 19 W. R. 241; 34 J. P. 629. And see *In re Romford Canal Company*, 24 Ch. D. 85; 52 L. J. Ch. 729; 49 L. T. (N.S.) 118.

This decision does not extend to securities issued by the local authority without sanction for the loan. It will be seen that the Local Loans Act, 1875 (38 & 39 Vict. c. 83), in the Appendix, provides a means whereby local securities may be granted with an indefeasible title.

Reference may here be made to the Acts for preserving purchasers of stock from losses by forged transfers: 54 & 55 Vict. c. 43, and 55 & 56 Vict. c. 36. These Acts may apply to transfers under this section. They are set out in full in the Appendix.

(d) See, as to the recovery of this penalty, section 251, *post*.

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and, after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction; (a) and such court may, after hearing the parties, (b) appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest, in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid. (c)

Receiver may be appointed in certain cases.

On such appointment being made, all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them: (d)

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, (e) or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum. (f)

(a) See the definition in section 4, *ante*, p. 22. In a case of money borrowed by a corporation under an act containing no such provision as that in the text, the Court of Chancery refused of itself to appoint a collector of local rates. *Preston v. Yarmouth (Corporation of)*, L. R. 7 Ch. 655; 41 L. J. Ch. 763; 27 L. T. (N.S.) 87; 20 W. R. 875.

As regards loans granted under previous Acts, section 343, *post*, p. 425, preserves all rights under those Acts, and consequently the right to a receiver.

(b) Hence a summons must be issued to the local authority in default.

It was submitted in a former edition of this Work, that this appointment required a stamp under 33 & 34 Vict. c. 97, but since the date of that edition the duties on appointments to offices have been repealed by 38 & 39 Vict. c. 23, s. 14, and have not been re-enacted by the Stamp Act, 1891 (54 & 55 Vict. c. 39).

(c) Note carefully what rates are to be collected by this receiver, as he will not have a general authority to collect all rates. This provision is ambiguous, as it does not clearly state whether the money is to be paid to all the mortgagees or to such only as have applied for the appointment of the receiver.

Note to Section 239. The statute does not enable the receiver to make the rate. The local authority may be compelled by *mandamus* to make it.

(d) In practice the ordinary collector of the rates, if there be one, will pay over the rates to the receiver, unless, as may be the case, the collector is himself made the receiver.

(e) Perhaps, the sum may be made up of principal and arrears of interest.

(f) Under 35 & 36 Vict. c. 79, s. 40, money might have been borrowed and the mortgagee might have obtained a receiver to enforce payment of arrears of principal and interest, and in the section referred to there was no specified limit as to the date. But that part of the section has not been re-enacted.

Rentcharge may be granted in respect of advances made for private improvements.

240. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses, (a) the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. to this Act (b) to such person of a yearly rentcharge issuable out of the premises (c) in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rentcharge shall be personal estate, (d) and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years (e) in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates, (f) and with respect to redemption of private improvement rates, (g) shall, *mutatis mutandis*, apply to rentcharges granted under this section.

(a) See section 213, *ante*, p. 291. If the money advanced has been already secured on some rate, the rentcharge will be an additional security.

This is a new provision, by which a stranger is entitled to acquire a rentcharge upon the land of another, but it is analogous to the enactments by which rents have been charged upon lands in commutation of tithes, except that there an action is given for the recovery of the rent. No action is given by this section. See *Willoughby v. Willoughby*, 4 Q. B. 687; *Bedford v. Sutton Coldfield*, 3 C. B. (n.s.) 449. But since the case of *Thomas v. Sylvester*, L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; 29 L. T. (n.s.) 290; 21 W. R. 912, it would probably be held that an action would lie. And see *Scottish Widows' Fund v. Craig*, 20 Ch. D. 208; 51 L. J. Ch. 363; 30 W. R. 463; *Booth v. Smith* (No. 1), 51 L. T. (n.s.) 395; 47 J. P. 759.

21 & 22 Vict. c. 98, s. 58, gave a summary remedy for the recovery of these rentcharges, but this part of that section has not been re-enacted, and the form does not contain in it a power of distress. Possibly the case may be considered to fall within section 251, *post*, p. 333. As to the recovery of arrears of rentcharge after sale of part of the property subject to the charge, see *Booth v. Smith* (No. 2), 14 Q. B. D. 318; 54 L. J. Q. B. 119; 51 L. T. (n.s.) 742; 33 W. R. 142. As to the remedy against the owner for the time being of part of the lands, see *Christie v. Barker*, 53 L. J. Q. B. 537.

A similar provision is contained in the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 36, *post*.

(b) See Form K., *post*. It is not now free from stamp duty.

(c) Hence, if the premises charged be afterwards severed, the rent will continue a charge upon every portion. With reference to the difficulty arising out of such a state of circumstances, see *Bedford v. Sutton Coldfield*, *supra*; *Rivis v. Watson*, 5 M. & W. 255.

(d) This provision will affect the devolution of the property in the case of intestacy. See the observations of the judges in *Bligh v. Brent*, 2 Y. & C. 268; per Wood, V.C., in *Hayter v. Tucker*, 4 K. & J. 248; *Thompson v. Thompson*, 1 Coll. 381; *Robinson v. Addison*, 2 Beav. 515. See also the cases referred to in the notes to section 235, *ante*, p. 319.

(e) It is somewhat uncertain when the rent is to commence, and the form in the schedule does not help further than to determine when the first payment shall be made. *Quære*, whether after the lapse of the thirty years any arrears then outstanding will be recoverable. See, on this point, *Reg. v. All Saints, Wigan*, *ante*, p. 318.

(f) See section 214, *ante*, p. 292.

(g) See section 215, *ante*, p. 293.

241. Rentcharges issued in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act. Note to Section 240.
Rentcharges to be registered.

See sections 237, 238, *ante*, p. 320, as to the default of registration with reference to other charges. See *In re Wynn Hall Coal Company*, L. R. 10 Eq. 515; 39 L. J. Ch. 695; 23 L. T. (N.S.) 348; 18 W. R. 1128.

242. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security. Power of Public Works Loan Commissioners to lend to local authority.

This section appears to contain a general power to the Commissioners to lend money at such rate of interest as appears to them to be satisfactory. The next section enables them to do so at a specific low rate of interest, but under certain restrictions.

The statutes which now govern the advances by the Public Works Loan Commissioners are mentioned in note (a) to section 233, *ante*, p. 315, and are (except in so far as they are unrepealed or relate only to local matters) set out in full in the Appendix. It is advisable that any local authority seeking a loan from these Commissioners should consult these Acts.

243. The Public Works Loan Commissioners may (a) on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, (b) whether for works already executed (c) or yet to be executed, on the security of any fund or rate (d) applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary, in order to enable the loan to be made without loss to the Exchequer: Power of Public Works Loan Commissioners to lend to local authority on recommendation of Local Government Board.

Provided,—

- (1.) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required. (e)

Section 243. (2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872.(f)

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.(g)

(a) The following is the scale of interest charged by the Commissioners on loans advanced on the recommendation of the Local Government Board on loans repayable within a period not exceeding thirty-five years, $3\frac{1}{2}$ per cent.; exceeding thirty-five years, but not exceeding forty years, $3\frac{3}{4}$ per cent.; exceeding forty years, but not exceeding fifty years, 4 per cent. See the Report of the Local Government Board for 1885—86, p. lxi.

As to the rate of interest on sums borrowed from the Commissioners under the Housing of the Working Classes Act, 1890, see that Act, 53 & 54 Vict. c. 70, s. 83, *post*.

(b) Note that this section does not apply to loans which are authorised by a local Act, though for purposes such as would be provided for by this Act. Therefore, if this Act empowers the authority to do the same thing as the local Act does, it would be best to proceed under this Act with reference thereto.

(c) These words are evidently used with reference not to the date of this Act, but to the time when the loan is applied for.

(d) It is presumed that the fund here referred to is the district fund of the urban authority or of the rural authority. See the next section.

(e) Thus, loans for paving, and the procuring of expensive engines or machines, are usually made repayable in a short period, say ten years; whereas loans for sewage works, for waterworks, reservoirs, gasworks, or street improvements, are allowed for a longer period, say forty or fifty years. See note (a) to section 234, *ante*, p. 317.

(f) This default may have occurred under the Sanitary Act, 1866 (29 & 30 Vict. c. 90), s. 49, or under section 299, *post*, p. 394. See these sections.

(g) The Public Works Loans Act, 1875, s. 33, provided that every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of that Act) or under the security for such loan, should be compounded for or released only under the authority of Parliament in each case. The amending Act of the following year, 39 & 40 Vict. c. 31, s. 6, after reciting that doubts had arisen whether the said enactment would prevent the reduction of interest in accordance with section 243 of the Public Health Act, provides that the commissioners may, on or before the 31st July, 1876, if they think it expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than 4 per centum per annum: Provided always, that nothing in the Public Works Loans Act, 1875, shall be deemed to take away or abridge the power of Loan Commissioners under section 243 of the Public Health Act, 1875, to reduce, if they think fit, any interest payable on any such loan to a local authority as in that section mentioned.

It may be well to refer here to the Public Works Loans Act, 1875, section 36, which requires the Local Government Board to satisfy themselves that the money advanced by the Commissioners is duly applied to the purpose of the loan. Again, section 37 empowers the Treasury to postpone for periods, not exceeding five years, the payment of the instalments of principal and interest, due on loans from the Public Works Loan Commissioners. No such power exists in respect of loans from other bodies or private individuals.

Borrowing
powers of
joint boards

244. Joint boards and port sanitary authorities under this Act,(a) and the local board of health of any main sewerage district(b) and any joint sewerage board(c) constituted under any of the Sanitary Acts, and

existing at the time of the passing of this Act shall, for the purposes of **Section 244.** their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act, or on the credit of sewage land and plant(d) as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act.

(a) See section 279, *post*, p. 379, as to the formation of joint boards, and section 287, *post*, p. 384, as to port sanitary authorities.

(b) Main sewerage districts were formed under 11 & 12 Vict. c. 63, s. 10, and were referred to in 35 & 36 Vict. c. 79, s. 58.

(c) See 28 & 29 Vict. c. 75, s. 9; 30 & 31 Vict. c. 113, s. 10; 35 & 36 Vict. c. 79, s. 26.

(d) See section 235, *ante*, p. 318. Here, however, the purpose of the loan is limited to that for which the joint board is constituted.

AUDIT.

Audit of Accounts of Local Authorities.

245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

By section 58 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, the accounts of the receipts and payments of district councils and their committees and officers shall be made up yearly to the 31st day of March, or, in the case of accounts which are required to be audited half-yearly (*e.g.*, the accounts of municipal corporations as urban sanitary authorities under section 246, *post*), then half-yearly to the 30th day of September and the 31st day of March in each year, and in such form as the Local Government Board prescribe. This enactment practically supersedes the text.

In connection with this subject reference should be made to the District Auditors Act, 1879 (42 Vict. c. 6), in the Appendix.

See section 206, *ante*, p. 275, as to the annual report.

246. Where an urban authority are the council of a borough, the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts.(a)

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint.(b) Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund.(c)

(a) For the election and duties of borough auditors, see the Municipal Corporations Act, 1882, sections 25—27, and section 62. The borough treasurer is required to make up his accounts half-yearly, submit them to the auditors, and

Note to Section 246. print a full abstract of his accounts for the year. This abstract is to be open to the inspection of ratepayers, who are also entitled to receive copies at a reasonable price (section 243, sub-section (4)). The last section will, if acted upon in boroughs, affect the time and form of the accounts.

(b) The auditors of the borough accounts act gratuitously, but as regards these accounts they are to be paid.

(c) 1 Vict. c. 78, s. 44, was repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which, by section 141, provides as follows in lieu thereof: "An order of the council for payment of money out of the borough fund, shall be signed by three members of the council, and countersigned by the town clerk. Any such order may be removed into the Queen's Bench Division of the High Court by writ of *certiorari*, and may be wholly or partially disallowed or confirmed on motion and hearing with or without costs, according to the judgment and discretion of the court." And by section 242 and Schedule IX., a reference to the new Act is to be deemed to be substituted for a reference to any Act amending the Municipal Corporations Act, 1835. With reference to the construction of the repealed statute, see *Reg. v. Lichfield*, 4 Q. B. 893; *Reg. v. Greene*, *ib.* 646; *Reg. v. Dunn*, 5 Q. B. 959; *Reg. v. Prest*, 16 Q. B. 32; 20 L. J. Q. B. 17; 15 Jur. 554; 14 J. P. 750; *Attorney-General v. Wigan* (*Mayor, &c., of*), 1 Kay, 268; 5 De G. M. & G. 52; 23 L. J. Ch. 429; *Reg. v. Sheffield* (*Mayor, &c., of*), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 24 L. T. (N.S.) 659; 19 W. R. 1159; 36 J. P. 37; *Reg. v. Norwich* (*Mayor of*), *ante*, p. 242.

Reference should also be made to the important Act, 35 & 36 Vict. c. 61, the Municipal Corporations (Borough Funds) Act, 1872, in the Appendix.

Audit where urban authority are not a town council. [Repealed as to words in italics by 42 Vict. c. 6, s. 11.]

247. Where an urban authority are not the council of a borough the following regulations with respect to audit(*aa*) shall be observed; (namely,)

- (1.) The accounts of the receipts and expenditure under this Act of such authority(*a*) shall be audited and examined once(*b*) in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union(*c*) *in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:*
- (2.) *There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:*
- (3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment(*d*) give at least fourteen days' notice(*e*) of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever: (*f*)
- (4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts, mentioned or referred to in such

accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested ^(g) for seven clear days ^(h) before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward ; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, ⁽ⁱ⁾ or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds : ^(k)

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- (5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, ^(l) and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same ; ^(m) and if any such person neglects ⁽ⁿ⁾ or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings ; ^(o) and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :
- (6.) Any ratepayer ^(p) or owner ^(q) of property in the district may be present at the audit, and may make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have ^(r) by law against disallowances :
- (7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence ^(s) or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made :
- (8.) Any person aggrieved by disallowance ^(t) made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor ; ^(u) and the said

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court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors.(v)

- (9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision;(v) and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person.(x)
- (10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.(y)

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.(z)

(aa) As to the audit of the accounts of rural authorities, see notes to next section.

(a) These words do not apply to the officers of the authority. They were not mentioned in 21 & 22 Vict. c. 98, s. 60, but were provided for in 37 & 38 Vict. c. 89, s. 38, which is re-enacted in section 250, *post*, p. 332.

(b) Thus it appears that the accounts of a town council, in respect of this expenditure, will, at present, be audited twice every year, while those of urban authorities will be audited only once. Moreover, the dates for the auditing of the accounts differ.

(c) The remainder of this and the whole of the following sub-section have been repealed by the District Auditors Act, 1879. Section 5 of that Act provides that the Local Government Board may make the necessary regulations as to the audit of these accounts.

(d) The auditor must appoint the time of the audit, for as he has other audits to attend to, the obligation of appointing the time of the audit of the urban authority accounts must rest with him.

(e) The words *at least* have a technical meaning, and exclude both the first and the last day. See *Reg. v. Shropshire (Justices of)*, 8 A. & E. 173.

(f) See 11 & 12 Vict. c. 91, s. 7, which contains a similar enactment in reference to the audit of union accounts. And see section 58 (3) of the Local Government Act, 1894, *post*, which provides that the Local Government Board may make rules modifying the enactments as to publication of notice of the audit, and of the abstract of accounts and of the report of the auditor.

Note to
Section 247.

(g) Who are the persons interested? 24 & 25 Vict. c. 61, s. 15, which modified the 21 & 22 Vict. c. 98, s. 60, gave the right of inspection to *owners and ratepayers*; but this section has not been altogether re-enacted. This phrase "persons interested" may possibly include others than ratepayers or owners—for example, contractors.

(h) Both the day of the publication and the day of the audit must be excluded. See *Liffin v. Pitcher*, 1 Dowl. (N.S.) 767.

(i) See also the provision in section 196, *ante*, p. 269. And see the orders of the Local Government Board already referred to as to the attendance of the officers of the authority at the audit.

(k) See as to the recovery of the penalty, section 251, *post*, p. 333.

(l) It is no answer to the demand of the auditor that the books relate to other matters as well as those under audit. He has a right to see them, in order that he may be satisfied whether or not they relate to the subjects of his audit.

(m) This is similar to 4 & 5 Will. 4, c. 76, s. 47, and 7 & 8 Vict. c. 101, s. 33.

(n) The word *wilful* is not inserted; therefore, any neglect will subject the person to a penalty. See *King v. Burrell*, 12 A. & E. 460.

(o) See the provisions as to the recovery of penalties in section 251, *post*, and refer to 7 & 8 Vict. c. 101, s. 33.

(p) There is no definition in the Act, except in reference to elections, of the term *ratepayer*. In this place it probably means every person assessed to the rate under audit.

(q) See the definition in section 4, *ante* p. 6.

(r) There was an inadvertence in 24 & 25 Vict. c. 61, s. 15, and it has been re-enacted here. The ratepayer has no appeal against a disallowance; he cannot be aggrieved thereby as a ratepayer. The passage should have run "*as is given*," and reference would then have been made to sub-section (8).

(s) The responsibility incurred by persons who sign cheques laid before them only for conformity's sake, or in the supposed routine of business, is shown in the cases of *Land Credit Company of Ireland v. Lord Fermoy*, L. R. 8 Eq. 7; *Joint Stock Discount Company v. Brown*, *ib.*, 404.

Some observations upon the duties and powers of the auditor, by ERLE, C.J., are reported in *Bayley v. Wilkinson*, 10 Jur. (N.S.) 726, but they are by no means intelligible, and do not appear in the report of the same case in 16 C. B. (N.S.) 161. As to the auditor's duties in disallowing illegal payments, see *Barton v. Pigott*, L. R. 10 Q. B. 86; 44 L. J. M. C. 5; 31 L. T. (N.S.) 404; 23 W. R. 233; 39 J. P. 454. From this case it appears that the auditor has no discretion in disallowing a payment which is illegal.

As to the notices which the auditors must give to persons not present at the audit before surcharging such persons, see 11 & 12 Vict. c. 91, s. 1, in the Appendix.

(t) See sub-section (6), *ante*, and the note thereto.

(u) In the Appendix are the provisions of the statutes which relate to the powers and proceedings of poor law auditors and the powers of the Poor Law (now the Local Government) Board with reference to appeals arising out of the audit of poor law accounts. They are the following:—7 & 8 Vict. c. 101, ss. 32, 33, 35; 11 & 12 Vict. c. 91, ss. 4, 5, 7—10; 12 & 13 Vict. c. 103, ss. 8, 9, 11; 39 & 40 Vict. c. 61, s. 38.

With reference to the audit of solicitor's bills, see section 249, *post*, p. 331.

(v) The Poor Law Board disposed of appeals made to them by correspondence between the parties interested, the auditor, and themselves, but occasionally referred matters of fact to their inspectors, who could examine witnesses and parties on oath. They were empowered, when they upheld the auditor's decision, to remit the disallowance and surcharge when they found that the subject-matter was incurred under circumstances that made it fair and equitable that it should be remitted upon payment of the auditor's costs (11 & 12 Vict. c. 91, s. 4). 29 & 30 Vict. c. 113, s. 5, enabled them to declare their decision by a certificate signed by the president and countersigned by a secretary or assistant secretary. The Local Government Board continue the same course of action as that of the Poor Law Board.

The auditor has power to surcharge for any deficiency that may on the face of the documents submitted to him appear to have arisen through negligence or misconduct, and the court will not interfere with the auditor's surcharge where, on the face of the documents submitted to him, there is evidence from which he might reasonably

Note to Section 247. have concluded that there had been such misconduct or negligence. *Reg. v. Knott*, 15 L. T. (N.S.) 291.

(w) The appeal referred to is that given by the previous sub-section to the Queen's Bench Division or to the Local Government Board.

According to the ordinary construction the days are to be counted one day inclusive and the other exclusive.

See 7 & 8 Vict. c. 101, s. 32, which requires payment in respect of poor law accounts to be made within *seven* days after the certificate, and as 11 & 12 Vict. c. 43, s. 11, has imposed a limitation of time upon all proceedings to obtain orders of justices, 12 & 13 Vict. c. 103, s. 9, prevents its operation upon these proceedings before the justices, but requires the auditor to proceed within nine months after the certificate, or within nine months after the determination of any appeal. *Reg. v. Tyrwhitt*, 15 Q. B. 249; 4 N. S. C. 266; 14 Jur. 1024; 19 L. J. M. C. 249; 14 J. P. 482.

(x) Where there has been no appeal, or the appeal has been decided in favour of the auditor's decision, and there has been no remission, the justices must enforce the auditor's decision. They have no discretion in the matter. *Reg. v. Tyrwhitt*, 2 E. & B. 77; 17 Jur. 893; *Reg. v. Linford*, 7 E. & B. 950; 21 J. P. 308; *Reg. v. Finnis*, 1 E. & E. 935; 28 L. J. M. C. 301; 23 J. P. 340. In *Reg. v. Fordham*, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85; 37 J. P. 420, it was held that while the certificate of the auditor was *prima facie* evidence of the amount due, it was not conclusive. Where, therefore, the certificate was for 139*l.*, and the overseers upon whom the surcharge was made proved a subsequent payment of 84*l.*, it was held that the justices were right in issuing their distress warrant for the balance only. In *Reg. v. Master*, L. R. 4 Q. B. 285; 38 L. J. M. C. 73; 19 L. T. (N.S.) 733; 17 W. R. 442; 33 J. P. 436, it was held that a balance due on an auditor's certificate was a debt only, and that the mode given for enforcing it did not make the non-payment an offence. Therefore, when the overseer to whom the certificate related proved his discharge under an adjudication in bankruptcy, it was held that the debt being provable was barred by the order of discharge, and no proceedings could be taken to enforce it. The payment of the sum certified, together with the costs of the proceedings for the recovery thereof, must now be enforced as if it were a poor rate. (47 & 48 Vict. c. 43, s. 11.) With regard to the provision as to the auditor's costs, reference should be made to *Prest v. Royston Union*, 33 L. T. (N.S.) 564; 24 W. R. 174. That case was the sequel to *Reg. v. Fordham*, *supra*. The justices having refused their warrant for more than 84*l.*, the auditor applied for a *mandamus* to the justices, but was refused. The overseer then applied to the Local Government Board, who consented to remit the disallowance, on condition that the overseer would pay the auditor's costs incurred before the justice and the court. The auditor, having failed to obtain the performance of his condition by the overseer, brought an action against the guardians for his costs under the corresponding provisions of 7 & 8 Vict. c. 101, s. 32. It was held that, under the circumstances, the defendants were liable. "The intention of the legislature clearly was that such an officer should not suffer the costs incurred by his *bond fide* discharge of duties imposed upon him."

(y) The accounts are those which have been audited. It is left to the clerk to make the abstract. It would have been better if the abstract were made by the auditor, or at least acknowledged and verified by him. But see now section 58 (3) of the Local Government Act, 1894, cited in note (f), *supra*.

The charges for publication are to be borne by the general district fund.

(z) A doubt arose as to whether the accounts of Commissioners acting under local Acts were, after 35 & 36 Vict. c. 79, liable to be audited by the district auditor. This was decided in the affirmative in *Reg. v. West Bromwich (Commissioners of)*, Q. B. Trin. Term, 1875; *Gibson v. Bell*, 39 J. P. 421. The language of this section in sub-section (1), however, is clear. But there may be other provisions in the local Act with reference to another audit; and where they are contradictory to those of this Act, the latter are to prevail. If they are not so, they may continue to be acted upon. See section 341, *post*, p. 423.

Where the Commissioners have other than sanitary duties to perform, and have, therefore, accounts as to other matters, if they can keep the accounts separate, the auditor referred to in this section will have no authority to audit them; but if they are not distinct, the whole must be submitted to him. And he is entitled to call for all the accounts so as to satisfy himself that they are distinct. This was stated by the court when the cases above referred to were argued.

248. *The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.* **Section 248.**

Audit of accounts of rural authority.
[Repealed in part by 56 & 57 Vict. c. 73, s. 89.]

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

See also the audit clauses in the Appendix, and as regards overseers' accounts see the General Order for Accounts, dated 14th January, 1867, in Macmorran and Lushington's "Poor Law General Orders," p. 420.

By section 89 and Schedule II. of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, the foregoing section is repealed except so far as it relates to overseers. The effect seems to be to repeal the part above printed in italics.

By section 58 (2) of the same Act the said accounts (*i.e.*, the accounts of the receipts and payments of district councils, their committees, and officers) shall, except in the case of the accounts audited by the auditors of a borough (*i.e.*, the accounts of municipal corporations as urban sanitary authorities, but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees, and officers, the audit shall be half-yearly instead of yearly. And by sub-section (3) of the same section, the Local Government Board may, with respect to any audit to which that section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor. And by sub-section (5) of the same section, every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district.

249. On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge. **Taxation of bill of solicitor or attorney.**

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the Master of the Crown Office, and declared by an order of the Local Government Board. (a)

If any such bill is not taxed by the clerk of the peace or some other duly authorised taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final. (b)

(a) The following is the text of a general order issued by the Local Government Board on the 20th April, 1877, relating to the taxation of law bills of urban and

**Note to
Section 249.**

rural sanitary authorities: "Whereas it is enacted by the 'Public Health Act, 1875,' that, on the application of any local authority whose accounts are required by that Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor in respect of legal business performed on behalf of such authority; and that the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and that the clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the Master of the Crown Office, and declared by an order of the Local Government Board.

And whereas the Master of the Crown Office has fixed the rate of allowance to the clerk of the peace in respect of such taxation as herein declared:

Now, therefore, We, the Local Government Board, in pursuance of the Act above recited, hereby order and declare that the clerk of the peace of every county or place in England and Wales shall be allowed after the rate of fourpence per sheet or folio of seventy-two words for the taxation of every bill due to any solicitor in respect of legal business performed on behalf of any local authority whose accounts are required by that Act to be audited."

It will be observed that this section applies to all sanitary authorities.

(b) In *Reg. v. Hunt*, 6 E. & B. 408; S. C. *sub. nom. Reg. v. Napton (Overseers of)*, 25 L. J. Q. B. 296; 2 Jur. (N.S.) 1138; *Napton, Ex parte (The Overseers of)*, 20 J. P. 581, the Court of Queen's Bench held, upon the construction of 7 & 8 Vict. c. 101, s. 39, from which this section is taken, that the auditor's decision in such a case could not be investigated or controlled by them, and the Local Government Board considered themselves equally concluded.

It is to be observed that the taxation by the clerk of the peace is only *primâ facie* evidence of the reasonableness of the charges, and does not conclude the auditor. It is not, moreover, any evidence of retainer.

As regards the charges of local authorities in promoting or opposing bills in Parliament, 35 & 36 Vict. c. 91, s. 6, in the Appendix, must be attended to. See the notes to section 229, *ante*, p. 308.

See the notes on section 247, *ante*, p. 329.

It should be observed that a bill against a sanitary authority may be ordered to be taxed in the ordinary way, and an order to refer to a master for taxation was held good in *Blake v. Croydon Rural Authority*, 2 T. L. R. 336.

Two local authorities whose districts were adjacent agreed to carry out a joint sewerage scheme by an agreement in which it was stipulated that all disputes as to the matters comprised therein should be settled by arbitration in the manner provided by sections 179, 180, *ante*, p. 250. An award was given in an arbitration which arose out of the agreement, whereby it was awarded that one of the authorities should pay to the other the costs of the reference and award. Upon motion for an order directing the taxation of the costs:—Held, that as the submission to arbitration had been made a rule of court, the taxing master was bound to tax the costs upon the application of the successful party; and that it was not obligatory on such party to bring an action upon the award in order to do so. *Chesterfield (Corporation of) v. Brampton Local Board*, 50 J. P. 824.

Auditor to
audit accounts
of officers.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts.

See the notes on section 247, *ante*, p. 328. This section does not prevent the local authority from exercising their own supervision over the accounts of their officers according to section 195, *ante*, p. 269.

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

251. All offences under this Act, and all penalties, forfeitures, costs, **Section 251.** and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, (a) may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. (b) The court of summary jurisdiction when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, (c) or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice. (d)

(a) See section 196, *ante*, p. 269, as to proceedings against officers in default, and section 256, *post*, p. 339, as to recovery of rates.

(b) See the definition of those terms in section 4, *ante*, p. 22. The Summary Jurisdiction Acts are 11 & 12 Vict. c. 43, 42 & 43 Vict. c. 49, 44 & 45 Vict. c. 24, and 47 & 48 Vict. c. 43.

It is, of course, impossible to incorporate with this work the provisions of these Acts. At the same time it is necessary to offer a few observations with reference to the Summary Jurisdiction Act, 1879, which was passed after this Act, and has in some respects created important changes in the law. The principal change consists in the distinction drawn by that Act between informations for offences of a criminal nature and complaints for the payment of money. Under the Act of 1848 there was no such distinction so far as concerned the enforcing of a conviction or order; both were enforced by distress and imprisonment. Now by section 6 of the Act of 1879, when, under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a *civil debt*, and if recovered before a court of summary jurisdiction, shall be recovered in the manner in which a sum declared by that Act to be a civil debt recoverable summarily, is recoverable under that Act and not otherwise. And the payment of any costs ordered to be paid by the complainant or defendant in case of any such complaint, are to be enforced in like manner as such civil debt and not otherwise. By section 35, any sum declared by the Act or by any future Act to be a civil debt which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts. The section goes on to provide that a warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint, and that the order is not to be enforced by imprisonment, except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62). This distinction between a conviction on information and an order made on complaint for the recovery of a sum of money, is very clearly set out in the judgment of FIELD, J., in *Reg. v. Paget*, 8 Q. B. D. 151; 51 L. J. M. C. 9; 45 L. T. (N.S.) 794; 33 W. R. 336; 46 J. P. 151; and *Reg. v. Kerswill or Torquay J.J.* [1895], 1 Q. B. 1; 64 L. J. M. C. 70; 71 L. T. (N.S.) 574; 43 W. R. 59; 59 J. P. 342; 10 R. 476; 11 T. L. R. 8.

Note to Section 251. The distinction is of peculiar importance with reference to its application to this Act. It happens more than once, for example, in section 21, *ante*, p. 51, that a penalty is imposed for an offence which the local authority are authorised to remedy, and that the local authority are empowered to recover summarily the expenses incurred in providing this remedy. In proceeding for the penalty, the local authority lay an information and the defendants may be convicted; in proceeding to recover these expenses, they make a complaint and the defendant is ordered to pay the money, which is thus a civil debt. The importance to the defendant is obvious. If he is convicted of the offence and fined, he may be sent to prison in default of distress; if he is ordered to pay a sum of money he cannot be imprisoned except by order made on judgment summons on proof of means. The test of criminal proceedings is stated by BRAMWELL, B., *Reg. v. Whitchurch*, *ante*, p. 121, to consist in the liability to have the penalty enforced by imprisonment in default of distress or payment. See also per CROMPTON, J., in *Parker v. Green*, 31 L. J. M. C. 133; per PALLES, C.B., in *Reg. v. Sullivan*, Ir. Rep. 8 C. L. 404; *Reeve v. Wood*, 34 L. J. M. C. 15; *Mellor v. Denham*, 5 Q. B. D. 467; 49 L. J. M. C. 89; 42 L. T. (N.S.) 493; 44 J. P. 472. The distinction between civil and criminal proceedings is important for other reasons. In a criminal proceeding, as a general rule, neither the defendant nor his wife are competent witnesses; if the justices dismiss the information, appeal will not lie to quarter sessions; if a case is stated for the opinion of the High Court, appeal to the Court of Appeal will not lie from the decision of the High Court. The practice as to the stating of a special case under 20 & 21 Vict. c. 43, or under the Summary Jurisdiction Act, 1879, cannot fully be treated in this Work. The law on the subject will be found in "Stone's Justices' Manual" and similar treatises. Among the recent cases as to stating a special case, the most important appear to be *Crowther v. Boulton*, 13 Q. B. D. 680; 33 W. R. 150; 49 J. P. 145; *South Dublin Guardians v. Jones*, 12 L. R. Ir. 358. As to the procedure to compel justices to hear and determine a case, see *Reg. v. Phillimore*, 51 L. T. (N.S.) 205; 32 W. R. 593; 48 J. P. 774; *Reg. v. Biron*, 14 Q. B. D. 474; 54 L. J. M. C. 77; 51 L. T. (N.S.) 429; 49 J. P. 68. In applying for a special case care must be taken to serve notice on the justices as required by the Summary Jurisdiction Rules (No. 18), otherwise there is no jurisdiction to state a case. *South Staffordshire Waterworks Company v. Stone*, 19 Q. B. D. 168; 56 L. J. M. C. 122; 57 L. T. (N.S.) 368; 36 W. R. 76; 51 J. P. 662; *Lockhart v. St. Alban's (Mayor, &c., of)*, 21 Q. B. D. 188; 57 L. J. M. C. 118; 36 W. R. 800; 52 J. P. 420. And the notices must be served on all the justices present at the hearing. *Westmore v. Paine* [1891], 1 Q. B. 482; 60 L. J. M. C. 89; 64 L. T. (N.S.) 55; 39 W. R. 463; 55 J. P. 440; 7 T. L. R. 214. And the appellant must give the respondent notice in writing together with a copy of the case before transmitting the case to the court. *Edwards v. Roberts* [1891], 1 Q. B. 302; 60 L. J. M. C. 6; 55 J. P. 439. As to the time within which a case must be delivered by justices, see *Hughes v. Wavertree Local Board*, 58 J. P. 654; 10 T. L. R. 357; and as to the time for lodging the case at the Crown Office, see *Aspinall v. Sutton* [1894], 2 Q. B. 349; 63 L. J. M. C. 205; 58 J. P. 622; 10 R. 465. Justices stating a case under 20 & 21 Vict. c. 43, are to be deemed to have stated it under all their powers including 42 & 43 Vict. c. 49. *Rochdale Building Society v. Rochdale (Mayor, &c., of)*, 51 J. P. 134.

As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action for such sums and penalties will not be maintainable. See *St. Pancras (Vestry of) v. Batterbury*, 2 C. B. (N.S.) 477; 26 L. J. C. P. 243; 3 Jur. (N.S.) 1106; 21 J. P. 424; *Blackburn (Mayor of) v. Parkinson*, 1 E. & E. 71; 28 L. J. M. C. 7; 5 Jur. (N.S.) 572; 32 L. T. (O.S.) 91; 23 J. P. 262; *Lampugh v. Norton*, 22 Q. B. D. 482; 58 L. J. Q. B. 279; 37 W. R. 422; 53 J. P. 389; 5 T. L. R. 304; *Great Western Railway Company v. Sharman*, 61 L. J. Q. B. 600; 40 W. R. 643. In the first of these cases it was laid down that when a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy must be adopted. In some cases, however, the remedy in the civil courts is expressly reserved, for example, section 261, *post*, p. 350, gives an alternative remedy in the county courts for demands under 50*l*.

It may here be mentioned that any information, complaint, warrant, or summons issued for the purposes of the Public Health Acts may contain in the body thereof or in a schedule thereto several sums. 53 & 54 Vict. c. 59, s. 8, *post*.

(c) Consequently the court will be a petty sessional court, as defined by section 20 of the Summary Jurisdiction Act, 1879. The same section requires the justices to sit in open court.

(d) These words include stipendiary magistrates, who are empowered by statute to do alone whatever is authorised by the Summary Jurisdiction Acts to be done by one or more justices. See 11 & 12 Vict. c. 43, s. 33; 21 & 22 Vict. c. 73; 32 & 33 Vict. c. 34. Note to Section 251.

It should here be observed that the jurisdiction of a county justice extends to the whole of his county, and is not limited to the division in which he usually acts. *Reg. v. Beckley*, 20 Q. B. D. 187; 57 L. J. M. C. 22; 57 L. T. (N.S.) 716; 36 W. R. 160; 52 J. P. 120. As to the jurisdiction of borough justices, see the Municipal Corporations Act, 1882, ss. 154—157, and *Reg. v. Williamson*, 7 T. L. R. 534.

As to the appearance of the local authority in legal proceedings, see section 259, *post*, p. 349.

252. *Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose.*(a) General provisions as to summary proceedings.

The description of any offence under this Act in the words of this Act shall be sufficient in law.(b) [Repealed by 47 & 48 Vict. c. 43.]

Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.(b)

(a) This clause was identical with section 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and having regard to that section was really superfluous. It was, therefore, repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43). The following cases may be referred to:—

Where an Act enabled commissioners to pull down dangerous structures and recover the expenses for so doing from the owner in a summary manner according to 11 & 12 Vict. c. 43, it was held that the six months ran from the date of the demand and refusal, and not from the incurring of the expense. *Labalmondiere v. Addison*, 1 E. & E. 41; 28 L. J. M. C. 25; 23 Jur. 431; 23 J. P. 261. The subsequent case of *Eddlestone v. Francis*, 7 C. B. (N.S.) 568; 3 L. T. (N.S.) 270; 25 J. P. 135, appears at first sight to be inconsistent with the earlier decision; but this is not the case, for the court considered that there had been such a demand in 1854 as would have entitled the local board to have proceeded within six months after that time, and proceedings were not, in fact, taken until 1858. And see *Greece v. Hunt*, *ante*, p. 191.

In proceedings under 25 & 26 Vict. c. 102, s. 75, for infringing a building line the six months under section 107 was held to begin to run from the time when the structure was discovered to be so far advanced as to show the full extent of the projection complained of, and not from the completion of the building. *Brutton v. St. George's, Hanover Square (Vestry of)*, L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. (N.S.) 552; 20 W. R. 84; 36 J. P. 580. This was dissented from in *Bermondsey (Vestry of) v. Johnson*, L. R. 8 C. P. 440; 42 L. J. M. C. 67; 28 L. T. (N.S.) 665; 21 W. R. 626; 37 J. P. 392, where it was held that the particular section (section 107), limiting the time for proceedings, applied only to pecuniary penalties and not to an order under section 75 for the demolition of a building. But in *Morant v. Taylor*, 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. (N.S.) 139; 24 W. R. 461; 40 J. P. 501, it was held that 11 & 12 Vict. c. 43, s. 11, which, as already stated, is identical with the text, applied to every kind of order made by a court of summary jurisdiction, and applied, therefore, to an order for the demolition of a building under the local Act. In that case the complaint was made more than six months after the completion of the building. And see *London County Council v. Cross*, 8 T. L. R. 506; [1892], W. N. 80; 66 L. T. (N.S.) 731; reversing 61 L. J. M. C. 160; 56 J. P. 550. In calculating the period of six months, the day on which the offence is committed or the matter of complaint arises must be excluded. See *Radcliffe v. Bartholomew* [1892], 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. (N.S.) 677; 40 W. R. 63; 56 J. P. 262.

The application of this clause to proceedings under section 150, for the recovery

Note to Section 252. of expenses of paving, &c., in private streets, will be found discussed in the notes to that section. See also section 257, *post*.

It is to be observed that this clause does not apply to continuing offences. See *Mayer v. Harding*, 17 L. T. (N.S.) 140; 32 J. P. 421; *Higgins v. Northwich Union*, 22 L. T. (N.S.) 752; 34 J. P. 806; *Ranking v. Forbes*, 34 J. P. 486, 513; *Marshall v. Smith*, L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. (N.S.) 538; 37 J. P. 471; *Rumball v. Schmidt*, 8 Q. B. D. 603; 46 L. T. (N.S.) 661; 30 W. R. 949; 46 J. P. 567; *Metropolitan Board of Works v. Anthony*, 54 L. J. M. C. 39; 33 W. R. 166; 49 J. P. 229. But see *Reg. v. Slade*; *Ex parte Saunders* [1895], W. N. 108; 30 L. J. Notes 428. And see the cases cited in the notes to section 158, *ante*, p. 219.

This section applies only to summary proceedings. Penal actions are governed by 35 Eliz. c. 5, as to which see *Dyer v. Best*, 4 H. & C. 189; L. R. 1 Ex. 152; 12 Jur. (N.S.) 142; 35 L. J. Ex. 105; 14 W. R. 363; 13 L. T. (N.S.) 753; 30 J. P. 151.

As to the application of this clause to complaints for the recovery of rates, see section 256, *post*, p. 339.

(b) These clauses have been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39), presumably because they are practically identical with the Summary Jurisdiction Acts, 11 & 12 Vict. c. 43, s. 14, and 42 & 43 Vict. c. 49, s. 39, sub-sec. (1).

Restriction on
recovery of
penalties.

253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, (a) be had or taken by any person other than by a party aggrieved, (b) or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General: (c) Provided that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house, building, manufactory, or place situated without their district. (d)

(a) In *Fletcher v. Hudson*, 5 Ex. D. 287; 49 L. J. Ex. 793; 43 L. T. (N.S.) 404; 45 J. P. 5, BRAMWELL, L.J., said: "I think the words 'except as in this Act expressly provided' must mean 'except when there is an express provision that some person may sue who is neither a party aggrieved, nor a local authority, nor a person acting with the consent in writing of the Attorney-General.' In other words, section 253 may be read thus: Proceedings may be taken by a party aggrieved; they may be taken by a person who has the consent of the Attorney-General; and, lastly, they may be taken by a person who not being one of the preceding, is expressly authorised to do so. Now I find in the Act three cases, there may be more, in which such persons are expressly so authorised, namely, sections 192 and 193, and rule 70; in each of these it is provided that the penalty may be recovered by any person." In addition to the cases cited by the learned judge, sections 68, 105, and 106 may be referred to as being cases in which proceedings may be taken by persons other than parties aggrieved or persons acting with the consent of the Attorney-General.

(b) A ratepayer in the district of the local board is not a party aggrieved by a member or the board voting in a matter wherein such member has an interest, so as to enable the former to maintain an action for a penalty without the consent of the Attorney-General. *Boyce v. Higgins*, 14 C. B. 1; 23 L. J. C. P. 5; 18 Jur. 333. But *quære* whether this case would now be considered law, having reference to *Fletcher v. Hudson*, *supra*, which expressly overrules *Smith v. Fieldhouse*, 35 L. T. (N.S.) 602. The same observation applies to *Hollis v. Marshall*, 2 H. & N. 755; 27 L. J. Ex. 235; 22 J. P. 210. There a person who was disqualified was returned as member of a board and acted; and it was held that a defeated candidate at the election or a ratepayer in the district was not a party aggrieved. Again, in *Rochfort v. Atherley*, 1 Ex. D. 511, the defendant, who was acting as a chairman of a local board after disqualification, made a complaint to the members thereof as to certain conduct of the plaintiff, who was clerk of the board; the plaintiff fearing that he might be dismissed from his office, resigned it and sued the defendant for a penalty under Schedule II., rule 70. It was held that he was not a party aggrieved within this section. While these decisions may stand as to the construction of the words *party aggrieved*, they had ceased to be of any authority for the proposition that a

person other than a party aggrieved might not sue for penalties under Schedule II., rule 70, now repealed, even before it was repealed, for the words to which note (a), *supra*, refers have been held to create an exception to the general rule established by this section. Moreover, the law as to suing members of local boards and officers was altered by the Public Health (Officers) Act, 1883, and the Public Health (Members and Officers) Act, 1885, *post*.

A chairman of a local board was charged with an offence under 11 & 12 Vict. c. 63, s. 28, which corresponds with rule 68 of Schedule II. of this Act. The prosecutor, though a member of the board, had not been a candidate at the election. It was held that he was not a party aggrieved so as to be able to institute the proceedings without the consent of the Attorney-General. *Reg. v. Blanshard*, 30 J. P. 280. In *Reg. v. Garratt*, 12 Q. B. D. 620; 53 L. J. M. C. 81; 32 W. R. 646; 48 J. P. 357, the mortgagee of licensed premises was held to be a person aggrieved by the refusal of justices to renew the license on account of their pecuniary interest in the premises. *Query*, whether the principle of this decision would apply so as to enable mortgagees to take proceedings under this Act in respect of offences causing injury to their property.

In *Harring v. Stockton (Mayor of)*, 31 J. P. 420, it was held that the surveyor of a corporation might lay an information under the Public Health Act, 1848, though he was not authorised to do so by writing under seal.

By Schedule II., rule 69 (now repealed by the Local Government Act, 1894, 56 & 57 Vict. c. 73, s. 89, and Schedule), a penalty was imposed upon any one fabricating a voting paper. The appellant was one of two candidates for election to a local board and was in a minority of five at the close of the poll. The respondents were charged with fabricating a voting paper for three votes in favour of the successful candidate. It was held that the appellant was a party aggrieved within the section. Per LUSH, J.: "Independently of any consideration of the effect of a fabricated vote upon the result of any election, any candidate is aggrieved by the fabrication of a vote within the meaning of the Act." *Verdin v. Wray*, 2 Q. B. D. 608; 46 L. J. M. C. 170; 35 L. T. (n.s.) 942; 25 W. R. 274; 41 J. P. 484.

"A party aggrieved is not brought into existence by the statute which gives him a penalty: he is a person who is supposed to exist, and the statute is passed on account of his grievance, and the action for the penalty is given to him." Per BRAMWELL, L.J., in *Robinson v. Curry*, 7 Q. B. D., at p. 470; see also *Drapers Company v. Haddon*, 9 T. L. R. 36; 57 J. P. 200.

(c) In an action where the Attorney-General's consent is required, it would appear to be necessary to allege in the statement of claim that his consent has been obtained. See *Hollis v. Marshall*, *supra*.

(d) See sections 108, 115, *ante*, pp. 128, 135. In these cases there can be strictly no person aggrieved, and the local board which would institute the proceedings is not the local board of the district.

254. Where the application of a penalty under this Act is not otherwise provided for, one-half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed: (a) Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

Application
of penalties.

(a) But for this provision penalties would have been payable to the treasurer of the county, borough, &c., under 11 & 12 Vict. c. 43, s. 31, and 40 & 41 Vict. c. 43, s. 6.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 221, provides that where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices, and payable to the Crown or to any borough corporate, or to any person whomsoever, the same if recovered before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered

**Note to
Section 254.**

for and adjudged to be paid to the treasurer of the borough ; but this section is not to apply to any fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered, if passed since the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), directs that the same shall go in any other manner and not to the borough fund. The present Act is, therefore, within the latter part of the section.

The following cases may be referred to for the purpose of elucidating the text :—*Seamen's Hospital Society v. Liverpool (Mayor of)*, 4 Ex. 180 ; 18 L. J. Ex. 371 ; *Wray v. Ellis*, 1 E. & E. 276 ; 28 L. J. M. C. 45 ; 32 L. T. (o.s.) 157 ; 23 Jur. 624 ; 7 W. R. 91 ; 22 J. P. 800 ; *Receiver of Metropolitan Police District v. Bell*, L. R. 7 Q. B. 433 ; 41 L. J. M. C. 153 ; 37 J. P. 55 ; *Attorney-General v. Moore*, 3 Ex. D. 276 ; 47 L. J. M. C. 103 ; 38 L. T. (N.S.) 251 ; 26 W. R. 366 ; 42 J. P. 372 ; *Alison v. Hall*, 4 T. L. R. 524 ; *Reg. v. Titterton* ; *Ex parte Quelch* [1895], 2 Q. B. 61 ; 64 L. J. M. C. 202 ; 59 J. P. 327 ; 11 T. L. R. 394.

As to the payment into the Police Superannuation Fund of fines awarded to police constables (being common informers), see 13 & 14 Vict. c. 87, s. 1 ; 53 & 54 Vict. c. 45, s. 16. *Alison v. Charlesworth*, 49 J. P. 294 ; and see *Alison v. Hall*, *supra*.

Proceedings
in certain
cases against
nuisances.

255. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding ; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance ; and the costs may be distributed as to such court may appear fair and reasonable.(a)

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.(b)

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.(c)

(a) In consequence of the overflow of the sewage from the premises of the respondent and the premises of other persons, it ran some distance in the premises of A., where it accumulated and constituted a nuisance. Whilst it was upon the premises of the respondent and the others it was no nuisance, and became such only when it reached the premises of A. :—Held, that an order might be made on each party whose sewage assisted in causing the nuisance. *Henaon Union (Guardians of) v. Bowles*, 20 L. T. (N.S.) 609 ; 16 W. R. 510 ; 34 J. P. 19. See also the cases cited in the notes to section 94, *ante*, p. 116, and especially the cases of *Brown v. Russell* and *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*.

(b) Notwithstanding this provision, it will be advisable to name the person who is subject to the process when he can be ascertained. It is to be observed that this provision is confined to nuisances, and is not of general application. See, however, *Reg. v. Mead* [1894], 2 Q. B. 124 ; 63 L. J. M. C. 128 ; 70 L. T. (N.S.) 766 ; 42 W. R. 442 ; 58 J. P. 448 ; 10 R. 217 ; 10 T. L. R. 413.

(c) The law does not generally allow of contribution among wrongdoers. See *Merryweather v. Nixan*, 8 T. R. 186; 2 Sm. L. C. 546; *Betts v. Gibbins*, 2 A. & E. 57; *Palmer v. Wick Steam Shipping Company* [1894], A. C. 318; 71 L. T. (N.S.) 163. Most of the cases as to nuisances arising under this Act are misfeasances or criminal acts of nonfeasance, and in such cases it would seem that the rule just mentioned would operate to prevent the recovering of contribution: There may, however, be cases in which contribution may be required.

256. If any person assessed to any rate made under this Act^(a) by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing,^(b) or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing,^(b) any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.^(c)

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

(a) See sections 209—217, *ante*, pp. 278—296.

(b) As to the service of this demand, see section 267, *post*, p. 359. A demand will, it is presumed, be sufficient if made by the collector of the rate.

(c) In the case of the poor rate, payment is enforced by distress and imprisonment under 12 & 13 Vict. c. 14. Formerly in enforcing payment of poor rates, justices were not a court of summary jurisdiction, seeing that they did not act under or by virtue of the Summary Jurisdiction Acts, and did not make an order on complaint within the meaning of sections 6, 35, of the Summary Jurisdiction Act, 1879, so as to make the poor rates civil debts within the meaning of these sections. *Reg. v. Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49; 42 L. T. (N.S.) 439; 28 W. R. 615; 44 J. P. 248. (The last of these reports is a *verbatim* report, and should be referred to.) Since the passing of the Summary Jurisdiction Act, 1884, s. 7, now repealed, and re-enacted by 52 & 53 Vict. c. 63, s. 13, justices are now a court of summary jurisdiction when sitting to hear complaints for poor rates. *Reg. v. London (Lord Mayor of)*, 57 L. T. (N.S.) 491; 52 J. P. 74; *Fourth City Mutual Building Society v. East Ham (Overseers of)*, L. R. (1892), 1 Q. B. 661; and see *Reg. v. Glamorganshire J.J.*, *ib.* 621. There never was any doubt on the construction of the text, for it expressly provides for the making of an order by a court of summary jurisdiction, and it would seem to follow that urban rates are civil debts. It is further to be observed that the section makes no provision for imprisonment in default of distress, but that defect is supplied by 11 & 12 Vict. c. 43, s. 22, as amended by 42 & 43 Vict. c. 49, ss. 6, 35, the effect of which is that in default of distress the defendant may be committed, but only upon proof of means given on judgment summons.

The provisions of this section are different from those contained in the corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 103. That section provided that in case the defaulter failed to appear according to the exigency of the summons, or no sufficient cause for non-payment were shown, the justice might by warrant cause the same to be levied by distress of the goods and chattels of the defaulter. With reference to this provision it was held that the section did not confer a discretionary power upon the justice, but that he was bound to act ministerially. *Reg. v. Newman*, 29 L. J. M. C. 117; 6 Jur. (N.S.) 293. It was also decided that the justices could not, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate. *Reg. v. Derbyshire (Justices of)*, 19 J. P. 772; nor as to the purpose to which the rate was applied; *Luton Local Board v. Davis*, 2 E. & E. 678; 29 L. J.

Note to Section 256. M. C. 173; 6 Jur. (N.S.) 580; 8 W. R. 411; 2 L. T. (N.S.) 172; 24 J. P. 677. In fact, the duties of justices resembled their duties in enforcing the poor rate.

Notwithstanding the alteration in the text, it is submitted that the section must be read as imperative, otherwise the justices would have power to determine when rates are or are not to be paid, whereas it is for the urban authority to remit for poverty. See section 225, *ante*, p. 302. It may be well to refer to the language of the court in *Ex parte Neath and Brecon Railway*, 9 Ch. D. 263; 43 L. J. Ch. 277; 30 L. T. (N.S.) 172; 22 W. R. 242. In that case JAMES, L.J., observed: "By the courtesy of Parliament when dealing with courts of justice, the word 'lawful' is used, but when it is said that it shall be lawful for the court to do a certain thing, it means that it shall be done, and it is in fact unlawful to do anything else." And in *Julius v. Oxford (Bishop of)*, 5 App. Cas. 214; 49 L. J. Q. B. 577; 42 L. T. (N.S.) 546; 28 W. R. 726; 44 J. P. 600, Lord CAIRNS, C., said that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised."

As already stated, the order here required is a new provision. It was not required by the previous statute. *Reg. v. Tottenham Local Board, Ex parte Perry*, 1 L. T. (N.S.) 413; 24 J. P. 87. It was therefore held that justices in acting under that statute were not affected by the limitation of time imposed by 11 & 12 Vict. c. 43, s. 11. *Sweetman v. Guest*, L. R. 3 Q. B. 262; 37 L. J. M. C. 59; 18 L. T. (N.S.) 52; 16 W. R. 426; 32 J. P. 212. The necessity of an order under the above section therefore introduces a question whether the limit of time prescribed by 11 & 12 Vict. c. 43, s. 11, will apply. The latter section takes effect in every case where upon a complaint a justice is authorised by law to make an order, and it imposes the limitation of time upon every case where a complaint or information is not made or laid within the specified time. It would appear, therefore, that complaint for these rates must be laid within a period of six months after they have been demanded, as required by this section. But it should be observed that there is no limit of time within which a demand must be made.

A special case may be stated by justices under section 33 of the Summary Jurisdiction Act, 1879, upon an application to enforce payment of a general district rate under this section. Where, however, a rate is good upon the face of it, the justices may not refuse to make an order for payment on the ground that there is a concurrent rate made for the same purpose. *Sandgate Local Board v. Pledge*, 14 Q. B. D. 730; 52 L. T. (N.S.) 546; 33 W. R. 565; 49 J. P. 342. This decision confirms the opinion already stated in this note, that the Summary Jurisdiction Acts apply to proceedings under this section, and that the duties of justices under it are ministerial only.

In *Sheffield Waterworks Company v. Mayor, &c., of Sheffield*, 55 L. J. M. C. 40; 54 L. T. (N.S.) 179; 34 W. R. 153; 50 J. P. 6, the appellants were summoned by the respondents before a court of summary jurisdiction to recover payment of a general district rate on certain property of the appellants, which rate had been made by the respondents for the borough of Sheffield on the 8th October, 1884. The rate was made, as regards some property of the appellants, on the basis of a supplemental valuation list, and as regards the remainder of the property, on the basis of the valuations on which the previous rates had been made. It was proved before the stipendiary magistrate that, after the rate had been demanded and before the summons was issued, the assessment committee had reduced the net rateable value of the hereditaments and premises occupied by the appellants. It was held that sufficient cause was shown for non-payment of the rate within the meaning of this section. The court distinguished *Sandgate Local Board v. Pledge (supra)*, on the ground that in that case the validity of the rate was sought to be impeached, while here only a wrong amount had been demanded. It is obvious, therefore, that in similar cases the urban authority ought to amend their rates under section 221, *ante*, p. 300, and proceed only for the reduced amount.

Payment by means of bills given to a collector would not be sufficient cause for non-payment. *Smith v. Barham*, 51 J. P. 581. For a case in which it was held that sufficient cause had been shown, see *Tynemouth Union (Guardians of) v. Backworth (Overseers of)*, cited in the notes to section 231, *ante*, p. 313. It may also be mentioned here that an owner may show cause if summoned for rates as owner under section 211 by proving that the rated premises have been assessed at a sum greater

than the prescribed amount. *Norwood (Overseers of) v. Salter* [1892], 2 Q. B. 118; 61 L. J. M. C. 193; 67 L. T. (N.S.) 376; 56 J. P. 535.

The fact that the property rated was at a distance of three miles from any of the paving, lighting, or drainage for which the rate was made, was held to be no sufficient cause for non-payment. *Newport (Mayor, &c., of) v. Lang*, 57 J. P. 199.

In *Reg. v. Hannam*, 34 W. R. 355, the Court of Appeal held that on an application before justices for payment of a rate under this section, the rate being good on the face of it, and the property in respect of which the occupier is rated being within the district of the local authority, the justices' duty is merely ministerial, and they have no jurisdiction to inquire into the validity of the rate. The judgment of BOWEN, L.J., in this case is worthy of careful perusal, as stating in a concise form the chief exceptions to the general rule that justices are bound to enforce a rate good upon the face of it, *e.g.*, non-occupation (*Reg. v. Bradshaw*, 2 E. & E. 836); where the property is outside the district of the rating authority (*Walker v. Great Western Railway Company*, 2 E. & E. 325); and the learned Lord Justice reserved his opinion whether there would not be another exception in the case of an exemption from rating under a public general statute. As to this last point, see *Bates v. Plumstead Overseers*, 64 L. J. M. C. 127; 72 L. T. (N.S.) 393; 59 J. P. 118.

Where there is occupation of part only of the property rated the remedy is by appeal against the rate, and justices must issue a warrant to enforce payment. *Manchester (Overseers of) v. Headlam*, 21 Q. B. D. 96; 57 L. J. M. C. 89; 52 J. P. 517.

In the *Rochdale Building Society v. Mayor, &c., of Rochdale*, 51 J. P. 134, the Rochdale Improvement Commissioners made a rate in 1876 on P, the owner, for improvement expenses, and he paid part thereof and died, having at the date of the rate executed a mortgage to B. B. entered into possession in 1882, and in 1885 the justices issued a distress warrant against B. for the unpaid rate made on P. It was held that the justices had no power to issue a distress warrant against B., who was not named in the rate. It was held, further, that the justices stating a case under 20 & 21 Vict. c. 43, may be taken to have stated it under all their powers, including those under the Summary Jurisdiction Act, 1879.

As to the recovery of a number of local rates of different kinds in the same summons, see 25 & 26 Vict. c. 82; 53 & 54 Vict. c. 59, s. 8, *post*.

It may here be mentioned that by section 14 of the Bills of Sale Act, 1882, a bill of sale is no protection against the seizure of goods for poor and parochial rates. But this section has been held to apply only to distress warrants under this section, and not where proceedings have been taken in the county court under section 261, *post*. *Wimbledon Local Board v. Underwood* [1892], 1 Q. B. 836; 61 L. J. Q. B. 484; 67 L. T. (N.S.) 55; 40 W. R. 640; 56 J. P. 633. As to the recovery of rates upon tithe rentcharge, see the Tithe Act, 1891 (54 Vict. c. 8), s. 6, and *Roberts v. Potts*; *Jones v. Cooke* [1894], 1 Q. B. 213; 63 L. J. Q. B. 381; 69 L. T. (N.S.) 849; 42 W. R. 294; 58 J. P. 333; 9 R. 230.

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act^(a) or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate^(b) not exceeding five pounds per centum per annum, from the date of service of a demand for the same^(c) till payment thereof, from any person who is the owner^(d) of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred.^(e) In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.^(f)

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three

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Section 256.

Recovery of
expenses by
local authority from
owners.

Section 257. months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.(g)

The local authority may, by order(h) declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner(i) from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.(k)

(a) See sections 23, 36, 41, 62, 150, 158, *ante*. See also various sections of subsequent Acts which are to be read with this Act, *e.g.*, 53 & 54 Vict. c. 59, ss. 19, 35, &c.

(b) It is not clear who is to settle the amount of this rate. Probably the justices or the court.

(c) This supplies an omission in previous legislation, which was referred to in *Wallingford or Wallington v. Willes*, 16 C. B. (N.S.) 797; 33 L. J. M. C. 233; 12 W. R. 917; 20 L. T. (N.S.) 784, as to the commencement of the interest.

(d) See the definition of the word *owner* in section 4, *ante*, p. 6. And see *Reg. v. Swindon Local Board*, *ante*, p. 193.

As to summary proceedings for the recovery of paving expenses under section 150, see that section and the notes thereto at pp. 176, 188, *ante*.

(e) So that successive owners are liable until the expenses are reimbursed with interest. *Plumstead Board of Works v. Ingoldby*, *ante*, p. 193. Though the owner is personally liable in so far as summary proceedings may be taken against him, yet the words of the text, which make the expenses a charge on the premises, do not create a personal liability. Accordingly the Court of Appeal refused leave to prove for them in an administration action. *West v. Downman*, *ante*, p. 191.

This section "imposes a charge on the premises immediately the expenses have been incurred, and there is no limitation of time during which that charge is to remain effective. The condition upon which the charge is made to arise is nothing but this, 'where the local board have incurred expenses for the repayment whereof the owner is made liable.' Directly, therefore, the local board have incurred such expenses, the section must be read as if immediately after that, there came these words, 'such expenses shall be a charge on the premises.' Therefore, directly from the moment the expenses which are named in that section have been incurred, such expenses are a charge on the premises, that is, the charge is imposed then and there by the statute. Moreover, the phrase is grammatically a phrase of addition, because the earlier part of the section names the other remedies to which the board may resort, and it adds the words 'and such expenses shall be a charge on the premises.' Therefore, it seems to me that, upon the reading of that section, this is a charge the moment the expenses are incurred, and it is a charge which exists although other remedies exist at the same moment that that commences, or other remedies may by different processes be made to arise either as against the owner, who is, in the first place, the person liable, or as against other persons. It is true that the owner is liable to another remedy the moment the expenses have been incurred which he ought to have defrayed himself. There is a remedy against him personally for the whole sum, which remedy is to be enforced within six months; but if the board claim the whole payment from him at once, yet fail to recover it from him personally, and there are no means of recovering it from him by distress, or if they pass by the personal remedy, then, if they have done nothing to prevent them from putting the charge into effect, I see no reason why the charge might not then and there be put into effect for the whole sum as against the owner. But the board has also the power of causing other remedies as against other persons to arise. They may declare the expenses to be private improvement expenses (see sections 150, 213). That is the first resolution which they may pass. Having done that, they may deal with that in one of two ways. Having declared the expenses to be private improvement expenses, they may make a private

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improvement rate, and if they do so, they at once have a remedy against the occupier, and they may distrain upon the occupier, and the occupier is given a remedy over against the owner to a certain extent. If they do make a private improvement rate, they can only put their remedies upon that rate into effect under what are called Jervis's Acts; and if they do attempt to put their remedy into effect against the occupier, they are at once as against him limited in time. They may not only attempt to use the summary remedy, but, as it was said, may, up to a certain amount, sue in the county court, and then the decision in *Tottenham Local Board v. Rowell* (1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135), which, if I may venture to say so, was perfectly right, is that the same limit of time applies. But that limit only affects remedies which they have as against the occupier or owner personally by summary proceedings. Well, having declared those expenses to be private improvement expenses, there is another mode in which they may deal with it. They may come to a resolution that the whole sum shall be divided into instalments and spread over a certain number of years, not exceeding thirty. If they do that, that at once gives them remedies against the occupier and against the owner. Having made the sum payable by instalments, I incline to agree that it makes the Act more reasonable and more fair, to say that they could not retract that and insist, either by putting the charge into effect or otherwise, upon an immediate payment of the whole. Having once made the sum payable by instalments it must so remain; but then, it being payable by instalments, they have a summary remedy against the occupier or against the owner as each instalment falls due. Although they have all these remedies they may be ineffectual, because the occupier may be unable to pay, the owner may be unable to pay, there may not be sufficient to enable them to recover by distress; all those remedies may fail, but if they do fail, it seems to me that there is nothing which, upon the failure of these remedies, has done away with that charge, which existed from the beginning, and which is not limited in time upon the arising of any condition subsequent by any words in the Act from the beginning to the end; but when the payment has come to be payment by instalments, then I think that if the charge is to be made effective it could only be made effective for instalments in arrear. . . . All the remedies which are either existing at the time when the charge takes effect, or which are, by following the forms of the statute, made to arise after the charge has taken effect, have nothing to do with the charge—they make it neither greater nor less. If these remedies fail, or are not put into effect, nevertheless the charge which exists absolutely independent of them, may always be made effective by the process of the court, and there is no limitation of time as to that, except, I suppose, the ordinary Statutes of Limitation." Per BRETT, L.J., in *Tottenham Local Board v. Rowell*, 15 Ch. D. 378; 50 L. J. Ch. 99; 43 L. T. (N.S.) 616; 29 W. R. 36.

The period of limitation within which an action to enforce a charge on the premises must be brought is twelve years (under the Real Property Limitation Act, 1874, s. 8), and the time begins to run from the date of the completion of the works, not from the date of the apportionment. *Hornsey Local Board v. Monarch Investment Building Society*, 24 Q. B. D. 1; 38 W. R. 85; 54 J. P. 391.

The charge takes effect on the completion of the works. Leasehold houses in an urban district abutting partly on a private road were sold on an open contract. At the date of the sale works had been done by the local board under section 150; the final demand for payment of the sums apportioned in respect of the premises was served after the purchase ought to have been completed. It was held that as between the vendor and purchaser the expenses were payable by the vendor. *Re Bettsworth and Richer's Contract*, 37 Ch. D. 535; 57 L. J. Ch. 749; 58 L. T. (N.S.) 796; 36 W. R. 544; 52 J. P. 740. But it was otherwise held in the metropolis, for there the expenses are not charged on the premises. *Egg v. Blayney*, 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. (N.S.) 65; 36 W. R. 893; 52 J. P. 517; and see *Re Field*, W. N. 1888, p. 36.

By the leases in 1875 and 1877 of two houses abutting on a private road, the lessee covenanted to pay all rates and taxes and to keep up the road. In 1882 the lessee executed a deed of gift of the two houses to his son upon trust for the father for life, he paying "all outgoings and performing the covenants in the leases," and after his death upon trust for the son absolutely. In July, 1884, the local board served notices on the father under section 150, requiring him to make up the portions of the road on which the houses abutted; but the notice was not complied with, and the board themselves did the work, which was completed in February, 1885. In June, 1885,

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the father died, and the son entered into possession of the houses. In September, 1886, the son was served with notices of apportionment of the expenses, and in February, 1887, he was served with demands and orders for payment of the assessed amounts by instalments, with interest :—Held, in an action by the son claiming payment of the assessed expenses—(1) that the expenses were not a debt due from the father's estate, inasmuch as the relation of debtor and creditor was not created by the Public Health Act, 1875, between the board and an owner of property for expenses incurred by the board ; and (2) that the charge of the expenses under section 257 could not be recovered by the son against the estate of the tenant for life. *In re Boor* ; *Boor v. Hopkins*, 40 Ch. D. 331 ; 58 L. J. Ch. 285 ; 60 L. T. (N.S.) 412 ; 37 W. R. 349 ; 53 J. P. 467. And see *In re Barney, Harrison v. Barney*, the facts of which are set out at p. 306, *ante*.

The charge is one, not on the interest of any particular owner of the premises, but on the total ownership, that is to say, on the respective interest of every owner for the time being in proportion to the value of his interest. Therefore, where the owner of leasehold premises had mortgaged them for the full term less a nominal reversion, it was held that the mortgagee was liable, and *JESSEL, M.R.*, made an order that the sum claimed with interest was a charge on the mortgagee's interest in the premises. *Birmingham (Corporation of) v. Baker*, 17 Ch. D. 782 ; 46 J. P. 52.

The word "owner" in section 150 and in the above section does not include a person who has the benefit of a covenant restricting the use of the premises in respect of which expenses for street improvements have been incurred. Therefore, where a local authority had obtained a charge under this section on a piece of land which was subject to a covenant restricting the owner thereof from building on it, it was held that they were not entitled to an order for sale of the land free from such restrictive covenant. The court distinguished *Birmingham (Corporation of) v. Baker, supra*. *Tendring Union (Guardians of) v. Downton* [1891], 3 Ch. 265 ; 61 L. J. Ch. 82 ; 65 L. T. (N.S.) 434 ; 40 W. R. 145.

It was held by the Court of Appeal that an action could not be maintained in the High Court to enforce a charge under this section for a sum less than 10*l.* *Westbury-on-Severn Rural Sanitary Authority v. Meredith*, 30 Ch. D. 387 ; 55 L. J. Ch. 744 ; 52 L. T. (N.S.) 839 ; 34 W. R. 217.

The plaintiffs incurred expenses in paving a street without having served on the defendants, who were frontagers, a notice under section 150 (*ante*, p. 176) requiring them to do the work themselves. The plaintiffs brought an action to enforce a charge upon the premises under this section. It was proved that B., a predecessor in title of the defendants, had taken from the plaintiffs a receipt for a payment in respect of the same expenses. It was held that the plaintiffs were not entitled, for the service of the notice was a condition precedent to liability on the part of the defendants, and that the payment by B. could not operate as a waiver of the omission to give the notice. *Farnworth Local Board v. Compton*, 34 W. R. 334. And see *Bacup (Corporation of) v. Smith*, 44 Ch. D. 395 ; 59 L. J. Ch. 518 ; 63 L. T. (N.S.) 195 ; 38 W. R. 697.

It was held that the charge might be enforced against the owner of the premises for the time being, although he was not the owner at the time the works were completed, and although the local authority had omitted to enforce their summary remedy against the then owner. *Sunderland (Mayor of) v. Alcock*, 51 L. J. Ch. 546 ; 46 L. T. (N.S.) 377 ; 30 W. R. 655. And see *East London Waterworks Company v. Kellerman* [1892], 2 Q. B. 72 ; 67 L. T. (N.S.) 319 ; 56 J. P. 773, as to the liability of a purchaser in respect of a charge under 50 & 51 Vict. c. 21, s. 4, *post*, for arrears of water rates.

In 1879 the owner of premises abutting on H. street and E. street, Blackburn, mortgaged them to the defendant. In 1880 the plaintiffs, the corporation of Blackburn, paved H. street. In 1881 the mortgagor, in accordance with the provisions of the Blackburn Improvement Act, 1870, executed a charge on the premises in favour of the corporation for the payment by instalments of his apportionment of the expenses thereof. In 1882, and prior to the commencement of the operation of the Blackburn Improvement Act, 1882, the corporation paved E. street, and in 1883 the mortgagor further charged his premises, in accordance with the provisions of the Act of 1882, with the payment by instalments of the expenses thereof. The mortgagor made default in payment of the instalments. On the death of the mortgagor in 1883 the defendant took possession of the premises under his mortgage. In an action by the corporation against the mortgagee to recover the unpaid instalments under section 247 of the Act of 1882, which entitles the corporation to institute an action at law

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against "successive owners" of premises for the recovery of the expenses of paving streets, it was held that the defendant, being mortgagee in possession, was a successive owner within the meaning of section 247; and that the execution of a charge in favour of the corporation did not preclude them from the remedy of action at law to recover the expenses; and that the Act of 1882 was applicable to the recovery of expenses incurred prior to the commencement of the operation of that Act. *Blackburn Corporation v. Micklethwait*, 54 L. T. (N.S.) 539; 50 J. P. 550.

On the hearing of a summons for expenses under section 150, the defendant contended that the sewer was not one for which owners could be made liable, that the road was a highway, and that it was not a street. The magistrate dismissed the summons, but it did not appear on what ground. Afterwards the surveyor made a new apportionment, under which the sum apportioned as the defendant's share was less than that formerly claimed. The local board brought an action under section 257 to have the sum declared to be a charge on the premises. The court gave judgment for the plaintiffs for the amount of the second apportionment. They held that they were not estopped by the magistrate's decision, as the grounds of it did not appear; that the magistrate had not, as was suggested, jurisdiction to finally decide whether the street was a highway (*Reg. v. Hutchins*, ante, p. 182), and that there was power to make a second apportionment. *Manchester (Mayor and Corporation of) v. Hampson*, 3 T. L. R. 466; 35 W. R. 334. The Court of Appeal in this case agreed with the Divisional Court that there was no estoppel, the matter not being *res judicata*, and that the surveyor had power to make a new apportionment. The court, however, ordered a new trial on defendant's counsel stating that they had evidence to show that the street was a highway repairable by the inhabitants at large. 35 W. R. 591.

By a special Act, which was to be read together with the Public Health Act, 1875, as one Act, a local authority were empowered to apportion the "estimated expenses" of sewerage, paving, and other works in a street among frontagers, and recover the expenses so apportioned either before the work was commenced, during its progress, or after its completion, by action at law or summary proceedings, and if the actual expenses were less than the estimated sum, the difference was to be paid to the frontagers who had paid such sum, or whose property might have been "charged therewith:"—Held, that the right conferred by section 257 of the Public Health Act, 1875, to charge the property of frontagers with expenses incurred was not, by virtue of the above provisions of the special Act, extended to estimated expenses. *Mayor, &c., of West Ham v. Grant*, 40 Ch. D. 331; 58 L. J. Ch. 121; 60 L. T. (N.S.) 17.

The expenses in respect of which a charge is given by this section are not land charges within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act. *Reg. v. Land Registry (Vice-Registrar of)*, 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. (N.S.) 117; 38 W. R. 236; 54 J. P. 120; 6 T. L. R. 104. But where the 55 & 56 Vict. c. 57 has been adopted, a register of charges must be kept by the urban authority. See section 27 of that Act, *post*.

(f) As to the limitation of time for summary proceedings, see note (l) to section 150, ante, p. 190. But there is no limitation of the time within which a demand must be made. *Wortley v. St. Mary, Islington (Vestry of)*, 51 J. P. 167.

It is only upon this notice that the board can recover summarily, and that appeal lies to the Local Government Board under section 268, *post*. See per BRETT, L.J., in *Reg. v. Local Government Board*, cited in the notes to section 268, *post*, p. 360.

(g) With reference to the conclusive character of the apportionment, see *Cook v. Ipswich Local Board*, ante, p. 193; *Shanklin Local Board v. Millar*, ante, p. 194; *Tunbridge Wells Local Board v. Akroyd*, ante, p. 195; *Hesketh v. Atherton Local Board*, ante, p. 195; *Manchester (Mayor of) v. Hampson*, supra; *Sandgate Local Board v. Keene*, ante, p. 195. From these cases it would seem that the failure to dispute the apportionment does not prevent the owner, when before the justices, from raising questions as to his being legally liable. But it would appear that where the objection is only to part of the sum apportioned, so that there is jurisdiction as to the residue, that objection can only be taken by way of objection to the apportionment under this section. See per SMITH, J., in *Bournemouth Commissioners v. Watts*, ante, p. 190; *Midland Railway Company v. Watton*, ante, p. 189. In the latter case it was held that when the apportionment has not been disputed, it is no answer to summary proceedings that the defendant has been charged in respect of a greater extent of frontage than he possesses. And see also *Éccles v. Wirral Sanitary Authority*, ante, p. 188.

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This dispute is to be settled by arbitration. See section 150, note (o), *ante*, p. 195.

(h) This is an alternative provision for that which is given by section 213, which deals with private improvement rates. That section enables an urban authority to make a rate on the occupier for these expenses. This section enables the local authority to make an order on the owner for the same, and to charge the amount on the premises, the amount to be payable by annual instalments, and the rate of interest to be settled by themselves. It would seem that the local authority must in the first instance decide which course they will adopt (see *Wilson v. Bolton (Mayor of)*, *ante*, p. 196), but their decision will not affect their right to enforce the charge on the premises created by the first paragraph of the section. See the judgment of BRETT, L.J., in note (e) *supra*.

The H. urban authority, after giving notice to N. to pave, &c., a new street adjoining N.'s premises, did the work at a cost of 4,758*l.*, to defray which the H. board borrowed, with the sanction of the Local Government Board, money at 4 per cent. The sum apportioned on N. was 2,412*l.*, and the local board, by resolution, duly resolved to make the sum payable by N. by instalments during 20 years at 5*l.* per cent. On non-payment of an instalment by N.:—Held, the justices were right in enforcing payment, and were not bound to allow the objection that the H. board charged higher interest than they themselves paid. *North British Railway Company v. Home Cultram Local Board*, 54 J. P. 86.

(i) See section 251, *ante*, p. 333.

There must apparently be a fresh demand for each instalment, and the six months' limitation will run from such demand. See *Prescott v. Nicholson*, 53 J. P. 597. As to enforcing the charge on the premises in respect of unpaid instalments, see the judgment in *Tottenham Local Board v. Rowell*, *ante*, p. 342.

(k) See section 214, *ante*, p. 292.

Justices may act though members of local authority or liable to contribute.

258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

This section merely removes the disqualification of a justice by reason of his being a member of a local authority. It does not enable him to act in cases where he has a pecuniary interest, or where he has, as a member of the local authority, taken part in setting the law in motion. This will appear from the following cases :—

H., the owner of a farm in the parish of Edmonton, bounded by the river Lea, entered into an agreement with the Enfield Local Board, under which he received the sewage of the Enfield district, and disposed of it over his farm. After a few months disagreements arose, and the Enfield board took proceedings against H. to enforce the agreement. While these were still pending, H., after notice given to the board, diverted the sewage from his farm through a pipe into the old open channel or watercourse in the parish of Edmonton, through which the sewer had been used to flow into the river Lea. On this the Edmonton Local Board threatened proceedings against the Enfield board for the nuisance; and the Lea Conservancy took out summonses under their Act against H. for having opened the pipe into the channel, &c., and for continuing the use of it. On the summonses coming on for hearing, M., who was chairman of the Enfield board, and had taken an active part in its proceedings, sat with three other justices on the bench. H. objected to M. sitting as a justice, but he remained, and H. was convicted in penalties. A rule for a *certiorari* was then obtained for the purpose of quashing the conviction, on the ground that M. was an interested justice. On showing cause M. made affidavit that, though he sat on the bench, he took no part until the other justices had unanimously determined to convict, when he proposed a mitigation of the penalties, and that he did not sign the conviction:—Held, that M. had such an interest as might give him a real bias in the matter; consequently, he ought not to have sat as a justice, and it was immaterial

what part he really took in the matter ; and the court made the rule absolute with costs against M. *Reg. v. Meyer or Harrison*, 1 Q. B. D. 173 ; 34 L. T. (N.S.) 247 ; *Section 258*. 24 W. R. 392 ; 40 J. P. 645.

Complaint having been made to the Local Government Board of a nuisance upon premises belonging to B., in the borough of W., the board communicated with the town council of W., as the urban sanitary authority, and required them to abate the nuisance. The council having made enquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the town council when the resolution was passed :—Held, that the councillors who were justices had such an interest as might give them a bias in the matter ; that, consequently, they ought not to have sat as justices on the hearing of the summons, and that the rule for the *certiorari* to quash the order must be made absolute. *Reg. v. Milledge and Others, Justices of Weymouth*, 4 Q. B. D. 332 ; 48 L. J. M. C. 139 ; 40 L. T. (N.S.) 748 ; 27 W. R. 659 ; 43 J. P. 606, 650. But where justices who were members of a town council, and as such had taken an active part in the making of an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), sat to hear a complaint of non-observance of the order, it was held they had no such interest in the subject matter of the complaint as to oust their jurisdiction. *Reg. v. Huntingdon (Justices of)*, 4 Q. B. D. 522 ; 43 J. P. 767. It will be observed that in this case the justices had not taken any part in the ordering of the prosecution. Upon this ground the decision in *Harring v. Stockton (Mayor of)*, 31 J. P. 420, may be supported.

By a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for that purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice, who was also an alderman and a member of the corporation, but it came on for hearing before justices none of whom were connected with the corporation. It was held that the justices could not properly proceed with the hearing, as the summons had been issued by one who was virtually a prosecutor. *Reg. v. Gibbon and Another, Justices of Lancashire*, 6 Q. B. D. 168 ; 29 W. R. 442. This decision was disapproved of in *Reg. v. Handsley and Others, Justices of Burnley*, 8 Q. B. D. 383 ; 51 L. J. M. C. 137 ; 30 W. R. 368 ; 46 J. P. 119. In that case it was laid down that where by statute a member of a town council may act as a justice in matters arising under the Act, in order to disqualify him from acting, it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is a member are the prosecutors, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. An officer of a corporation appointed to collect the borough rate obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but upon his own responsibility, and without consulting the council. At the hearing the justices dismissed the summons on the ground that one of the sitting magistrates, being a town councillor, was thereby disqualified from adjudicating upon the summons. On motion for a *mandamus*, it was held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification. But although the mere fact that a justice is a member of the local authority does not disqualify him from acting in cases arising under this Act, yet if he be present when the prosecution is resolved upon, he cannot afterwards sit and determine the case. Therefore, where a justice was a member of a town council, and was present when a prosecution for selling unsound meat was resolved upon, it was held that he was disqualified from sitting to hear the summons. *Reg. v. Lee*, 9 Q. B. D. 394 ; 30 W. R. 750 ; 47 J. P. 118. So also where a justice had been a member of a committee appointed to report upon certain mining pollutions of a stream, and had acted upon such committee, he was held to be disqualified to act at the hearing of a summons for polluting the stream, though he had not actually taken part in ordering the prosecution. *Reg. v. Spalding or Spedding*, 49 J. P. 804 ; "Law Times," 12th December, 1885, p. 96.

The Fishery Act, 1865, s. 61, contains a provision similar to that in the text. A justice who was also a member of a board of conservators of a fishery district was present at a meeting of the board, at which a resolution was unanimously passed to take legal proceedings against a person for violation of certain provisions of the Fishery Acts. He took no prominent part in the proceedings, but his name appeared

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as being present at the meeting when the resolution authorising the water bailiff to institute the prosecution was passed. The justice afterwards sat with others to hear the charge, and the alleged offender was convicted. It was held that the disqualification otherwise attaching to the justice by reason of his having acted as a member of the board at which the prosecution was authorised, was not removed by section 61 of the Fishery Act, 1865, and that the conviction must, therefore, be quashed. *Reg. v. Henley* [1892], 1 Q. B. 504; 61 L. J. M. C. 135; 66 L. T. (N.S.) 675; 40 W. R. 383; 56 J. P. 391. In a similar case of a prosecution by a fishery committee, of which a justice was a member, and afterwards sat on the bench when the case was heard, the court quashed the conviction, though the justice deposed that he had taken no part in the case, and only retired with his brother magistrates out of curiosity. And the court intimated that in future they might award costs against any justice so offending. *Harvey v. Gibb*, "Times," 17th May, 1892.

The interest which is sufficient to disqualify need not be a direct interest. Thus, at a special sessions for appeals against poor rates the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on he left the bench, and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them:—Held, that the chairman being a litigant in a matter similar to the other matters before the court, was disqualified from acting as a justice, and that the orders were bad. *Reg. v. Great Yarmouth (Justices of)*, 8 Q. B. D. 525; 51 L. J. M. C. 39; 30 W. R. 460; 46 J. P. 148. A member of a Nonconformist council who was opposed to the renewal of licenses was present at a meeting of that council at which it was resolved to oppose the transfer of a license. It was held that he was incapable of sitting as a justice at the hearing of the application for the transfer and the proceedings were quashed, though he took no part in the ultimate decision. *Reg. v. Fraser*, 9 T. L. R. 60. Upon the hearing of a summons under section 361 of the Merchant Shipping Act, 1854, a justice who was a qualified pilot belonging to the pilotage district within which the alleged offence was committed was held, by reason of his membership of the class in whose interests the proceedings were taken, to be disqualified from acting as a justice, even though by reason of the peculiar nature of his employment as a pilot he was not actually brought into competition with unqualified pilots. *Reg. v. Huggins* [1895], 1 Q. B. 563; 64 L. J. M. C. 149; 72 L. T. (N.S.) 193; 43 W. R. 329; 59 J. P. 104; 11 T. L. R. 205.

Where a justice is shown to have taken an active part in defending an appeal against a decision of which he approves, but to which he was no party, he is disqualified on the ground of probability of bias from taking part in deciding the appeal. *Reg. v. Cumberland JJ.*, 58 L. T. (N.S.) 491; 52 J. P. 502. At a vestry meeting, summoned by a district surveyor to consider (*inter alia*) the obstruction of a highway by the defendant, who had deposited and left a heap of earth and manure by the side of a highway, a justice moved a resolution calling upon the defendant to remove the heap. The defendant having failed to remove the heap, a summons was taken out against him by the district surveyor for depositing the heap to the obstruction and annoyance of the highway, and for failing to remove it after notice. The justice who had moved the resolution, and who was a ratepayer of the parish, sat and adjudicated with another justice upon the summons, and made an order directing the heap to be removed and sold, and the proceeds of the sale to be applied to the repair of the highway:—Held, that the justice was disqualified from adjudicating upon the summons, for the part taken by him in moving the resolution afforded ground for a reasonable suspicion of bias on his part, though there might not have been bias in fact, and upon the further ground that as a ratepayer he was peculiarly interested in the result of the summons. *Reg. v. Gaisford* [1892], 1 Q. B. 381; 61 L. J. M. C. 50; 66 L. T. (N.S.) 24; 56 J. P. 247. The fact that a *subpœna* to give evidence in a particular case has been served upon a magistrate is not of itself sufficient to disqualify him from hearing and adjudicating upon such case. *Reg. v. Tooke*, 32 W. R. 753; 48 J. P. 601. A justice, who was a surgeon, attended a patient professionally for injury caused by an assault. He endeavoured to induce his patient not to prosecute for the assault, and conveyed to him a message sent by the person who had committed the assault offering an apology and suggesting a settlement. A summons was issued for the assault, the justice was subpoenaed to give evidence for the prosecution, and a prohibition was obtained to prohibit him from sitting at

the hearing. The justice moved to set aside the prohibition, and it was held that his acts did not show that he had such a substantial interest in the result as to make it likely that he had a bias, and that the fact of his being subpoenaed did not disqualify him from sitting, and, therefore, the prohibition was set aside. *Reg. v. Farrant*, 20 Q. B. D. 58; 57 L. J. M. C. 17; 57 L. T. (N.S.) 880; 36 W. R. 184; 52 J. P. 116.

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Section 258.

Where a justice is disqualified on the ground of interest, it is open to the parties to the case to waive the objection. If they acquiesce in his acting after knowledge of the disqualification, they cannot afterwards object. See *Reg. v. Richmond JJ.*, 8 Cox C. C. 314; 8 W. R. 562; 24 J. P. 422; *Ex parte Ilchester*, 25 J. P. 56; *Reg. v. Kent JJ.*, 44 J. P. 298; *Wakefield Local Board v. West Riding and Grimsby Railway Company*, L. R. 1 Q. B. 84; 6 B. & S. 794; 12 Jur. (N.S.) 160; 35 L. J. M. C. 69; 13 L. T. (N.S.) 590; 14 W. R. 100; 30 J. P. 628.

There is no restriction here as in 11 & 12 Vict. c. 63, s. 132, and 16 Geo. 2, c. 18, as to the justice acting alone or at quarter sessions. And now by the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115), in order that justices may act in the execution of Acts in some cases in which they would otherwise be incapable of acting, it is provided that a justice shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners or trustees, or any other local authority, by reason only of his being one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expense in diminution of which such penalty will go. And see *Reg. v. Bolingbroke* [1893], 2 Q. B. 347; 62 L. J. M. C. 180; 69 T. L. (N.S.) 717; 42 W. R. 128; 58 J. P. 118; 5 R. 536; *Ex parte Workington Overseers* [1894], 1 Q. B. 416; 70 L. T. (N.S.) 143; 42 W. R. 177; 58 J. P. 381; 9 R. 135.

259. Any local authority may appear before any court or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

Appearance
of local autho-
rities in legal
proceedings.

The appearance mentioned in this section refers to the appearance in court. The clerk may appear without any authority, but any other officer must have an authority, either given generally or for the special proceeding. Thus the inspectors of nuisances may have such general authority, but it should be in writing, containing a copy of the resolution as entered in the minutes. As regards the practice of justices, it must be noticed that where they refused to determine a complaint under 11 & 12 Vict. c. 63, without the attendance of the clerk of the local board, the Court of Queen's Bench refused to interfere. *Ex parte Leamington Local Board*, 5 L. T. (N.S.) 637.

A question has been asked upon the word *institute*, whether it applies to notices of nuisances, and of other matters which may or may not be followed by proceedings in court. The better opinion appears to be in the negative.

29 & 30 Vict. c. 90, s. 48, from which this section is taken, extended the provision in 18 & 19 Vict. c. 121, s. 5, which had restricted the appearance of the officer to the particular case in which directions had been given. See *Isle of Wight Ferry Company v. Ryde Commissioners*, 25 J. P. 454.

A local board passed a resolution that the superintendent and sergeants of the county police for the time being acting within the district should be authorised as officers of the board to institute and prosecute all such proceedings as might be necessary under specified clauses of a local Act, which embodied the provisions of this section. It was held that the board had no power under this section to delegate prosecutions to the police, who were not their officers nor under their control. *Kyle v. Barber*, 58 L. T. (N.S.) 229; 52 J. P. 725; 4 T. L. R. 206; 16 Cox C. C. 378.

Section 260. **260.** In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

Name of local authority need not be proved.

This is a new section. It seems to be rather *ex majori cautela*.

Demands below 50*l.* may be recovered in county courts.

261. Proceedings for the recovery of demands below fifty pounds, (a) which local authorities are empowered to recover in a summary manner, (b) may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognisance of such courts. (c)

(a) This is an increase of the limit in the statute 24 & 25 Vict. c. 61, s. 24.

(b) See section 251, *ante*, p. 333. This section applies, therefore, only to sums which can be recovered summarily—not to those which can be recovered in other ways, as, for example, the costs, &c., to which section 104, *ante*, p. 125, relates.

(c) The six months' limitation for summary proceedings is also applicable to the proceedings taken in the county court. *Tottenham Local Board v. Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135; following *West Ham Local Board v. Maddams*, 1 Ex. D. 516 n.; 33 L. T. (N.S.) 809; 40 J. P. 470. These cases were distinguished in *Leeds (Mayor, &c., of) v. Robshaw*, 51 J. P. 441. In that case the Leeds Improvement Act, 1877, s. 96, provided that summary proceedings before justices for the recovery of expenses must be brought within one year. Section 109 provided that when any person neglected to pay any sum due to the corporation, such sum might be recovered in any court of competent jurisdiction for the recovery of debts of the like amount. Other remedies were given for the recovery of these sums, one by an Act of 1842 by way of distress, in which there was no limit of time, and another by an Act of 1866 by action at law. It was held that the limitation of one year did not apply to proceedings by way of action of debt in the county court.

It may be questioned whether, if the local board take summary proceedings and fail, they can afterwards bring an action in the county court, or *vice versâ*. Probably they could not. But the failure in either case does not affect the power of the local board in respect of the charge on the premises under section 257. See the remarks of BRETT, L.J., in the notes to that section.

In *Eccles v. Wirral Sanitary Authority*, *ante*, p. 188, MATHEW, J., says: "By section 261 jurisdiction is conferred on the county court in cases of this kind (*i.e.*, to recover expenses due under section 150), and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above 50*l.* an action would lie in the superior court." But this *dictum* appears to be contrary to the rule that where a debt is created by a statute which expressly provides for its recovery, the remedy so provided must be followed, and an action will not lie. See *Vestry of St. Pancras v. Batterbury*, and the other cases cited at p. 188, *ante*.

By section 14 of the Bills of Sale Act, 1882, a bill of sale shall be no protection in respect of personal chattels included in such bill of sale, which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates. It was held that the section did not apply where proceedings for the recovery of a poor rate had been taken in the county court under the above section. *Wimbledon Local Board v. Underwood* [1892], 1 Q. B. 836; 61 L. J. Q. B. 484; 67 L. T. (N.S.) 55; 40 W. R. 640; 56 J. P. 633.

Proceedings not to be quashed for want of form.

262. No rate, order, conviction, or thing made or done or relating to the execution of this Act shall be vacated, quashed, or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by *certiorari* or any other writ or process what-

soever into any of the superior courts : (a) Provided that nothing in this Section 262. section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate, order, conviction, or thing to which such special case relates. (b)

(a) Reference is apparently made here to section 269, *post*, p. 363. The Act does not contain any definition of the term superior court, but the text evidently refers to the High Court of Justice.

Notwithstanding this provision, a writ of *certiorari* will be granted where the proceedings show on the face of them a want of jurisdiction. *Reg. v. Gosse*, 3 E. & E. 277 ; 30 L. J. M. C. 41 ; 3 L. T. (N.S.) 404 ; *Broughton Local Board, re*, 12 L. T. (N.S.) 310 ; *Reg. v. Staffordshire (Justices of)*, 16 L. T. (N.S.) 430 ; *Reg. v. Rose or Wood, ante*, p. 256 ; *Colonial Bank of Australasia v. Willan*, L. R. 5 C. P. 417 ; 43 L. J. C. P. 39 ; 30 L. T. (N.S.) 237 ; 22 W. R. 516. In the case last mentioned it was laid down that when a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or a manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached. Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try. *Ibid.* And see *Bradlaugh, Ex parte*, 3 Q. B. D. 509 ; 43 J. P. 125, and the cases cited in "Paley on Convictions," 6th edition, at p. 430 ; "Short and Mellor's Crown Office Practice," p. 116.

Where both parties agreed to waive this provision, and stated a case for the opinion of the court, the fact that the corresponding section in 11 & 12 Vict. c. 63, had taken away the *certiorari*, was held not to prevent the court from determining the question. *Reg. v. Dickenson*, 7 E. & B. 831 ; 26 L. J. M. C. 204 ; 3 Jur. (N.S.) 1076 ; 22 J. P. 243.

As to the practice relating to the removal of convictions, etc., by *certiorari*, see "Paley on Convictions," chap. iv., s. 2. See also the *Crown Office Rules*, Nos. 28—42. It was held that the six days' notices to the justice, under No. 33 of these rules, as a preliminary to the grant of a writ of *certiorari*, must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute. *Ex parte Roberts*, 50 J. P. 567. An application for *certiorari* to the Queen's Bench Division does not lie after conviction and judgment in the superior court. *Nally v. Reg.*, 16 L. R. Ir. 1 ; 15 Cox C. C. 638.

(b) This proviso was inserted to meet the difficulties which arose in cases such as *Reg. v. Fielding*, 17 J. P. 243 ; *Reg. v. Staffordshire (Justices of)*, 16 L. T. (N.S.) 431 ; *Reg. v. Chantrell*, L. R. 10 Q. B. 587 ; 44 L. J. M. C. 94 ; 33 L. T. (N.S.) 305 ; 23 W. R. 707 ; 39 J. P. 472. It is now rendered unnecessary, so far as regards cases stated by quarter sessions, for the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40, provides that a writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination for the purpose of obtaining the judgment (see section 188) of a superior court. In *Clark v. Alderbury Union*, 29 W. R. 334, it was held that the provision rendered a *certiorari* unnecessary to bring up a case stated by sessions on a rating appeal, and that the clerk of the peace on receiving notice from the solicitor of the party requiring it, should send up the case to the Crown Office. As to the recognizances in such a case, see the *Crown Office Rules*, Nos. 36, 38.

263. Any person who on any examination on oath, (a) under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury. False evidence punishable as perjury.

(a) See 52 & 53 Vict. c. 63, s. 3, the effect of which is stated, *ante*, p. 124.



Section 264.

Notice of
action against
local autho-
rity, &c.
[Repealed by
56 & 57 Vict.
c. 61.]

264. *A writ or process shall not be sued out against or served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority, member, officer, or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served; and unless such notice is proved the jury shall find for the defendant.*

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere.

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the court, at any time before trial, pay into court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be non-suited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

This section is repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61, *post*).

Protection of
local autho-
rity and their
officers from
personal
liability.

265. *No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by any such authority, member, officer, or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.(a)*

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.(b)

(a) "The effect of clauses of this sort is not to leave a complaining party remediless, but to oblige him to bring his action against the public board or against the commissioners as a body. . . . And any damages that may be recovered will be payable out of the funds at their disposal under the provisions for payment for damages and costs." "Addison on Torts," 5th edition, p. 669. In similar clauses in other Acts, it is provided that the action shall be brought against the clerk. In such a case it has been held that the clerk is not liable personally. *Wormwell v. Hail-*

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Section 265.

stone, 6 Bing. 668; and see *Hall v. Smith*, 2 Bing. 156; *Cane v. Chapman*, 5 A. & E. 647. Under the present Act the authority must be sued in their corporate name. (See section 7, *ante*, p. 26.) The effect of this section is, therefore, to exempt from personal liability every one who has *bona fide* contracted with the local board to do some act under their direction, though he may thereby cause damage to another person which the Act itself does not justify or excuse. Thus, where the defendants were contractors acting under the direction of the Metropolitan Commissioners of Sewers, and while so acting injured the plaintiffs' premises, it was held that they were not liable. *Ward v. Lee*, 7 E. & B. 426; 26 L. J. Q. B. 142; 21 Jur. 557; 5 W. R. 403; 21 J. P. 179. In *Le Feuvre v. Miller*, 8 E. & B. 321; 26 L. J. M. C. 175; 21 J. P. 436, a question was raised and argued whether a bailiff who executed a warrant of distress to enforce payment of a rate alleged to be illegal was within this section. The question was not decided, but the court seemed to be of opinion that the case was within the principle of *Ward v. Lee*. And see *Southampton and Itchin Floating Bridge Company v. Southampton Local Board*, 8 E. & B. 801; 27 L. J. Q. B. 128; 3 Jur. (N.S.) 1261. But the effect of the section is not to relieve a contractor from liability for the negligence of himself or his servants. "When there is no negligence, a party doing an act in obedience to the board of health is not liable, in that case he is very properly absolved, and the superior alone is liable, but if he is guilty of negligence in doing the act, and damage ensues, he is personally liable." Per Lord CAMPBELL, C.J., in *Arthy v. Coleman*, 6 W. R. 34; 21 J. P. 771. And see *Jones v. Bird*, 5 B. & Ald. 837; *Clothier v. Webster*, 12 C. B. (N.S.) 790; 31 L. J. C. P. 316. But a person who contracts for works under a local board is not liable for an injury which arises out of these works long after they are completed; for example, when after a sewer has been laid in a road by the contractor, there is a subsequent subsidence, it being the duty of the board to look after such occurrences. *Hyams v. Webster*, L. R. 2 Q. B. 264; 36 L. J. Q. B. 166; 16 L. T. (N.S.) 118; 15 W. R. 619; 31 J. P. 439. And see *Smith v. West Derby Local Board*, *ante*, p. 160. The cases in which a contractor has been held liable are to some extent discussed in the notes to the Public Authorities Protection Act, 1893, *post*. A surveyor who executed an illegal order of a highway board was held to be personally liable, but not the clerk, who only wrote out the order. *Mill v. Hawker*, L. R. 10 Ex. 92; 44 L. J. Ex. 49; 33 L. T. (N.S.) 177; 23 W. R. 348; 39 J. P. 181. This case was distinguished in *Monks v. Dillon*, 10 L. R. Ir. 349. There works were executed by the contractor of a drainage board, pursuant to contract with them and by their authority, under the superintendence of the engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, and was frequently present on the ground and saw the works in progress, but did not further interfere. Some of the works were admittedly acts of trespass to the lands of the plaintiff, as the board had not obtained an assessment of compensation or paid such compensation before entry. It was held that the engineer was not liable for the trespass so committed.

The effect of the rule, as above stated, is to render the local board liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the exercise of works which they order to be done. This was stated in *Ward v. Lee*, *supra*, and held in *Southampton and Itchin Bridge Company v. Southampton Local Board*, *supra*, and see *Fairbrother v. Bury Rural Sanitary Authority*, 37 W. R. 544. In the latter case the local board were held to be liable to an action for so negligently and improperly constructing a sewer as to cause a nuisance by its discharge and an injury to the plaintiffs. Again, where a local board had ordered a new sewer to be constructed in their district, under a contract and plans which did not provide for a penstock or flap required to prevent the plaintiffs' premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged, it was held that the local board were liable. *Ruck v. Williams*, 3 H. & N. 308; 27 L. J. Ex. 357; 22 J. P. 420. Where a corporation provided an improper machine in a washhouse, they were held liable for a damage caused thereby. *Cowley v. Sunderland (Mayor of)*, 6 H. & N. 565; 30 L. J. Ex. 127, 177; 9 W. R. 668; 25 J. P. 434.

A vestry acting as a sewer authority laid down a new sewer, and in so doing a contractor employed by them laid bare a wrought-iron service water pipe, which was about two-and-a-half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the

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trench some clay was put round the pipe, but not in such a quantity or in such a manner as to prevent it from leaking. A few months afterwards the pipe leaked, and the surrounding clay and earth being thereby moistened, gave way under a heavily laden van which the plaintiff was driving, and the van being overturned the plaintiff was thrown from it to the ground and seriously injured. Upon an action brought to recover damages from the defendants, it was held that the vestry knew or ought to have known, the character and condition of the pipe at the time it was laid bare in constructing the new sewer, and consequently were liable for negligence in not having taken special precautions against it leaking thereafter. *Cox v. Paddington Vestry*, 64 L. T. (N.S.) 566.

By a general system of drainage made by the defendants in a particular district, various farms in that district were drained by several underground drains, by which the water was carried through all such farms. The defendants let one of these farms to the plaintiff, with the usual covenant for quiet enjoyment against the acts of the lessors or any persons lawfully claiming through or under them. The defendants had previously let another of such farms adjoining, but lying above the plaintiff's farm, to one C., with a right to use the drains through the plaintiff's land, so far as they were adequate to carry the water from C.'s farm. C., during the plaintiff's tenancy, first, by excessive user of the drainage system, which was properly constructed for the purpose of drainage, caused the water passing down the drains in his farm to escape and overflow into the plaintiff's farm and damage his crops. Secondly, by a proper user by C. of the drains passing through the plaintiff's farm, damage was also done to a field in plaintiff's farm by the escape of water; but this arose from one of the drains there having been imperfectly and improperly constructed. It was held that the defendants were liable to the plaintiff for a breach of their covenant for quiet enjoyment in respect of this last damage, as there had been within the meaning of such covenant a substantial interruption by a person who lawfully claimed through the defendants, but that the defendants were not liable for the damage done by the excessive user by C. of the drainage system, which was properly constructed, either under their covenant of quiet enjoyment, or under the law of trespass or nuisance. *Sanderson v. Mayor, &c., of Berwick*, 13 Q. B. D. 517; 53 L. J. Q. B. 559; 51 L. T. (N.S.) 495; 33 W. R. 67; 49 J. P. 6.

Where a right is given by statute to do acts causing damage to other persons' property subject to the payment of compensation, and the statute provides a special tribunal for assessing the amount of compensation, if such tribunal becomes non-existent a person whose property has been damaged by the exercise of the statutory right is entitled to have the amount of compensation assessed in an action in the High Court. *Bentley v. Manchester, Sheffield, and Lincolnshire Railway Company* [1891], 3 Ch. 222; 60 L. J. Ch. 641; 65 L. T. (N.S.) 22.

It has already been observed that when a contractor is employed by a local board, this section does not free him from the consequences of *his own negligence* or that of his servants. Where negligence on the part of such contractor is proved, and the local board have not in any way by interference or the like contributed towards the wrongful act of the contractor or his servants, the board are not liable. See *Humphreys v. Mears*, 1 M. & Ry. 30; *Duncan v. Findlater*, 6 Cl. & F. 894; *Steel v. South Eastern Railway Company*, 16 C. B. 550; *Butler v. Hunter*, 7 H. & N. 826; *Bayley v. Wolverhampton Waterworks Company*, 7 H. & N. 241; *Foreman v. Canterbury (Mayor of)*, ante, p. 159; *Smith v. South Western Railway Company*, L. R. 6 C. P. 14; *Hill v. New River Company*, 9 B. & S. 303; *Daniel v. Metropolitan Railway Company*, L. R. 5 H. L. 45; 35 J. P. 708. But if the damage arises out of the works themselves, or if the local board are really the parties executing the works, the board are liable. See *Scott v. Manchester (Corporation of)*, 1 H. & N. 59; *Hole v. Sittingbourne Railway Company*, 6 H. & N. 488; 30 L. J. Ex. 81, *Blake v. Thirst*, 2 H. & C. 20; 32 L. J. Ex. 188; *Pitts v. Kingsbridge Highway Board*, 25 L. T. (N.S.) 195; 19 W. R. 884. Where a duty is imposed upon a public body they are not excused from omitting to perform it, or from the imperfect or improper performance of the duty, by reason of their having engaged a contractor to do it. See *Pickard v. Smith*, 10 C. B. (N.S.) 470; *Gray v. Pullen*, 5 B. & S. 970; 34 L. J. Q. B. 265; 29 J. P. 69. And where work is ordered to be done which is lawful in itself, but from which in the natural course of things injurious consequences are likely to arise, the employer must see that means are adopted to prevent such consequences. He cannot relieve himself of his liability by employing someone else to do what is necessary to prevent the act he had ordered to be done from becoming wrongful. *Bower v. Peate*, 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. (N.S.) 321; 40 J. P. 789;

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Angus v. Dalton, 6 App. Cas. 740; 50 L. J. Q. B. 689; 44 L. T. (N.S.) 484; 30 W. R. 191; 46 J. P. 132. And when persons are incorporated by statute for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such inconvenience and injury. *Geddes v. Bann Reservoir (Proprietors of)*, 3 App. Cas. 430. Of course a public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions (see *Holden v. Liverpool New Gas Company*, 3 C. B. 1); nor for the act of their officer or agent done without their knowledge and beyond the scope of his employment. *Bolingbroke v. Swindon Local Board*, L. R. 9 C. P. 575; 43 L. J. C. P. 287; 30 L. T. (N.S.) 723; 23 W. R. 47. In that case a local board, being in occupation of a sewage farm, had given to B. plenary powers for the management of such farm in the most beneficial manner. A ditch ran between the farm and the land of the plaintiff. With a view to rendering such ditch more capable of carrying off the drainage from the farm, B. wrongfully went upon the plaintiff's land and pared away his side of the ditch, and cut down so much of the brushwood and underwood on the plaintiff's side as impeded the flow of drainage along the ditch:—Held, that the acts so done by B. were not within the scope of his employment, and consequently that the local board were not liable for them at the suit of the plaintiff, there being no implied authority from the board to do them. And see *Charlestown v. London Tramways Company*, 36 W. R. 367.

D. contracted with the defendants, an urban authority, to supply by the day a driver and horse to drive and draw a watering cart belonging to the defendants. The driver was employed and paid by D., and was not under the defendants' direction and control otherwise than that the defendants' inspector directed him what streets to water. In an action to recover damages for injuries caused by the negligent conduct of the driver whilst in charge of his cart, it was held (distinguishing *Quarman v. Burnett*, 6 M. & W. 499, and *Rourke v. White Moss Colliery Company*, 2 C. P. D. 205), that the defendants were not liable. *Jones v. Corporation of Liverpool*, 14 Q. B. D. 890; 54 L. J. Q. B. 345; 33 W. R. 551; 49 J. P. 311.

Neither are a local board responsible for accidents arising out of extraordinary causes, where all reasonable care has been taken to prevent such as would arise from ordinary causes. See *Blyth v. Birmingham Waterworks Company*, and the other cases cited in the notes to section 66, *ante*, p. 92. As to the precautions which public bodies are required by law to take to prevent injury from the exercise of their powers, reference may be made to *Great Western Railway of Canada v. Braid*, 1 Moo. P. C. (N.S.) 101; *Biscoe v. Great Eastern Railway Company*, L. R. 16 Eq. 636; 21 W. R. 902.

The police authorities of a town in Scotland had opened the manhole of a sewer in the middle of a thoroughfare to clean the sewer. They had set up a winch over the hole, and had protected three sides of it. Two men were at work. A boy of nine years running along the street, and looking over his shoulder, fell into the hole. It was held that the police authorities were not liable, as they were doing an ordinary act in a proper way with sufficient precautions. *Adams v. Aberdeen Magistrates*, 11 Ct. of Sess. Cas. 4th series, 852.

The liabilities of local boards as surveyors of highways, and in respect of accidents on highways caused by their negligence have already been considered. See section 144, *ante*, p. 157.

When a public board let the navigation of a river and omitted to give notice to the lessee to repair a lock, and in consequence of such want of repair a barge owner sustained loss, the board were held not to be liable, as the loss did not necessarily result from the omission. *Walker v. Goe*, 4 H. & N. 350; 28 L. J. Ex. 184. And where a corporation were empowered to improve the navigation of a river, and for that purpose erected staunches, which being accompanied with the accumulation of filth and the growth of weeds, caused the river to overflow and damage the lands adjoining, it was held that the riparian owner had no ground of action against the corporation, though he might have a ground of compensation under the section corresponding to section 308, *post*. *Cracknell v. Thetford (Mayor of)*, L. R. 4 C. P. 629; 38 L. J. C. P. 353.

The principle on which a private person or company is liable for damages occasioned

Note to Section 265. by the neglect of servants, applies to a corporation which has been entrusted by statute to perform certain works and to receive tolls for the use of those works, although the tolls, unlike the tolls received by the private person or company, are not applicable to the use of the individual corporators or to that of the corporation, but are devoted to the maintenance of the works. *Mersey Docks and Harbour Trustees v. Gibbs*, L. R. 1 H. L. 93; 35 L. J. Ex. 225; 14 W. R. 872; 30 J. P. 467. Therefore, conservators of a river having in part constructed and in part acquired a towing path, and having taken tolls for the use of it, were held liable for damages caused by its defective condition. *Winch v. Thames (Conservators of)*, L. R. 9 C. P. 378; 43 L. J. C. P. 167; 31 L. T. (N.S.) 128; 22 W. R. 879; 36 J. P. 646.

When public commissioners are guilty of negligence in the management of their works, and certain persons, to avert or remove damage which would result from such negligence to themselves, do an act which would damage a third person, he has a right of action against the commissioners whose negligence was the primary cause of the damage. *Collins v. Middle Level Commissioners*, L. R. 4 C. P. 279; 38 L. J. C. P. 236. See also *Harrison v. Great Northern Railway Company*, 3 H. & C. 231; 33 L. J. Ex. 266; *Burrows v. March Gas Company*, L. R. 7 Ex. 96; 41 L. J. Ex. 46; 36 J. P. 517.

It is right here to observe that a local authority will be liable for breaches of contract and for civil injuries to the same extent as any other corporate body. Hence in *Higgs v. Godwin*, 27 L. J. Q. B. 421; 31 L. T. (O.S.) 196, an action was brought against a local board for infringing a patent.

As regards other proceedings against local authorities, it may be stated that it was held that an action on the case was not maintainable against a local board for not paying the salary of an organist, which salary was claimed as payable out of certain moneys of which the local board had become trustees. It appeared that the board had funds applicable to the payment of the salary, but it was held that in the absence of a specific appropriation of a part of the fund to the plaintiff no action at law would lie, the proper remedy being in equity, or possibly by *mandamus*. *Edwards v. Loundes*, 1 E. & B. 81; 22 L. J. Q. B. 104; 17 Jur. 412.

In order to maintain an action against a local board for payment of claims upon them payable out of particular funds, it must be shown that they are in possession of those funds, and that they are available for payment of the claim. See *Pardoe v. Price*, 16 M. & W. 451; 16 L. J. Ex. 192; *Lloyd v. Burrup*, L. R. 4 Ex. 63; 38 L. J. Ex. 25; 19 L. T. (N.S.) 696. But in a case where a local board, in default of owners to execute works, contracted with a third person to execute them, and the contract contained a provision to pay him when the money was collected from the owners, it was held that he was entitled to recover for the work done by him, though the money could not be recovered from the owners by reason of a defect in the notices. *Worthington v. Sudlow*, *ante*, p. 242.

Where a vestry took possession of highways in respect of which a rent was payable to the representatives of a former owner of the land, they were held liable to an action for non-payment of the rent. *Sansom v. Shoreditch (Vestry of)*, L. R. 4 C. P. 654; 38 L. J. C. P. 286.

As to the liability of a local board to action for salaries due to officers, see the notes to section 189, *ante*, p. 262.

Where a municipal corporation were sued for a debt owing by them in that character, it was held that they could set off a debt due to them as a local board. *Pedder v. Preston (Corporation of)*, 12 C. B. (N.S.) 535; 6 L. T. (N.S.) 540.

It becomes necessary to consider how the judgment recovered against a local authority can be enforced. Where a judgment was recovered against the clerk of certain commissioners under an Improvement Act, and the sheriff had on a *fi. fa.* seized certain goods of the commissioners vested in them for public purposes, the Court of Exchequer refused to set aside the writ of *fi. fa.* and subsequent proceedings, but left the parties to bring an action of trespass, or to take such other remedy as they might think proper. *Saunders v. Slack*, 11 L. T. (N.S.) 484. This case was approved of in *Worrall Waterworks Company v. Lloyd*, L. R. 1 C. P. 719. There land, which had been conveyed to a local board for the purposes of the Public Health Acts, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk, it was held that the land was liable to be taken under a writ of *elegit*. WILLES, J., said: "We have been anticipated by the Exchequer in *Saunders v. Slack*, and by the

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decision of the House of Lords in the case of *Mersey Docks Trustees v. Gibbs* (*supra*). It has been said that the House of Lords only referred to the right of the plaintiff to judgment, and not to the execution; but the principle upon which their decision rests is equally applicable to the right to execution as to judgment, and it was so understood in *Coe v. Wise*, L. R. 1 Q. B. 711." If there be no property of the local board available to satisfy the debt, the proper remedy is by *mandamus* to the authority to pay or satisfy the judgment out of moneys in their hands or rates which they can make. A local authority has an implied power to make a rate to pay damages for injuries caused by the negligence of their servants in the exercise of their statutory powers. *Reg. v. Selby Dam Drainage Commissioners* [1892], 1 Q. B. 348; 63 L. T. (n.s.) 17; 8 T. L. R. 198; 56 J. P. 356. The decisions on *mandamus* in such cases have already been noticed: see the notes to section 210, *ante*, p. 278. See also *Webb v. Herne Bay Commissioners*, *ante*, p. 321, where it was held that a *mandamus* might be prayed for to compel the board to pay the amount due out of moneys in their hands without making a rate for the purpose; and *Bush v. Beavan*, *ante*, p. 262, where a *mandamus* was refused to enforce payment of a debt against commissioners, the debt not being a charge on the local rate, but due from the commissioners personally. The *mandamus* may be claimed in the same action as that to establish the debt. *Ward v. Lowndes*, 1 E. & E. 940; 22 L. J. Q. B. 40; 6 Jur. (n.s.) 247; 1 L. T. (n.s.) 268.

In 1885, the plaintiff obtained judgment with costs against the defendants in an action to restrain them from discharging sewage into a watercourse on his property. In 1890, the costs were taxed and the plaintiff obtained a garnishee order *nisi* attaching all the money belonging to the defendants in the hands of their treasurer. This order was discharged by VAUGHAN WILLIAMS, J., on motion in vacation, on the ground (following *Waddington v. City of London Union*, E. B. & E. 370) that the funds attached were raised by rates to meet expenses of the current year and not for past liabilities. The plaintiff then issued a writ of *elegit* against the lands of the defendants, and the defendants moved to discharge it on the ground that execution ought not to issue against their lands to satisfy a debt which they could not legally pay. The sheriff had not made his return to the writ and there was no evidence to show whether the defendants had any lands which could be lawfully applied in payment of the debt. It was held that the motion was premature and must be dismissed. *Jersey (Lord) v. Uxbridge Rural Sanitary Authority* (No. 1), 55 J. P. 165; W. N. [1891], p. 31; 7 T. L. R. 294. Afterwards the sheriff delivered under the writ land acquired for a sewage farm on behalf of a contributory place. It was held that such land could not be taken in execution to satisfy a debt payable out of general expenses, having been purchased out of a loan borrowed on the credit of the separate rates on the contributory place, and all proceedings under the writ and inquisition were ordered to be stayed. *Jersey (Lord) v. Uxbridge Rural Sanitary Authority* (No. 2) [1891], 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. (n.s.) 858; 7 T. L. R. 568.

When the local authority enter into any contract, they will be liable to the contractor in an action on the contract if it is broken by them, and he will not be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action on the case for the recovery of his damages. *Nowell v. Worcester (Mayor of)*, 9 Ex. 457; 23 L. J. Ex. 139; 2 C. L. R. 981; 18 Jur. 64; *Payne v. Brecon (Mayor of)*, 3 H. & N. 572; 27 L. J. Ex. 495; 22 J. P. 690. The judgment, if given against a municipal corporation, will not, however, operate as a charge upon the real estate belonging to it, unless the Lords of the Treasury order this to be done. *Arnold v. Gravesend (Mayor of)*, 25 L. J. Ch. 777; 2 K. & J. 574; 2 Jur. (n.s.) 703, nor, as it seems, upon other property of the corporation, according to *Pallister v. Gravesend (Mayor of)*, 9 C. B. 774; *Arnold v. Ridge*, 13 C. B. 745; 1 C. L. R. 309; 17 Jur. 896; 22 L. J. C. P. 235. But see *Worrall Waterworks Company v. Lloyd*, *supra*.

Section 249, *ante*, p. 331, should be mentioned here with reference to the taxation of the bill of the solicitor employed by the local authority.

Where a local authority enter into a contract *ultra vires*, and cannot pay the contractor out of their funds, the individual members of the board are not personally liable on that contract. *Bailey v. Cuckson*, 32 L. T. (o.s.) 124; 7 W. R. 16. Whether they can be made liable as on a personal guarantee may be a question; but according to *Mount Stephen v. Lukeman*, L. R. 5 Q. B. 613, no action would be maintainable unless there was a written document in conformity with the Statute

Note to Section 265. of Frauds. This decision was reversed in error upon a different view of the facts taken by the Court of Error : L. R. 7 Q. B. 196 ; 41 L. J. Q. B. 67 ; and the House of Lords confirmed the judgment of the Court of Error, holding that there was a personal pledge of credit : L. R. 7 H. L. 17 ; 43 L. J. Q. B. 188 ; 30 L. T. (N.S.) 437 ; 22 W. R. 617. As to the liability of individual members of a board for an illegal act committed by their officer, but by their direction, see *Mill v. Hawker*, ante, p. 353. In a more recent case a metropolitan vestry had passed resolutions authorising certain illegal expenditure out of the rates. An action was brought by the Attorney-General at the relation of a ratepayer, and by the ratepayer as plaintiff against the vestry and six of the vestrymen who had voted for the resolution, to restrain the proposed application out of the rates. It was not alleged that any of the rates had been applied as proposed, it was merely alleged that the vestry intended so to apply the rates. It was held that the individual defendants were not properly made parties for the purpose of obtaining costs from them, and that the action must be dismissed as against them. *Attorney-General v. Bermondsey (Vestry of)*, 23 Ch. D. 60 ; 52 L. J. Ch. 567 ; 48 L. T. (N.S.) 445 ; 31 W. R. 463 ; 47 J. P. 453. It would seem from this case that if the money had in fact been paid for the illegal purpose, the individual members might have been compelled to recoup the money and pay the costs, according to *Attorney-General v. Compton*, 1 Y. & C. 417.

It will be remembered that under 29 & 30 Vict. c. 90, s. 46, re-enacted in section 7, ante, p. 26, every local board was incorporated and rendered competent to sue and be sued in the corporate name. But under 11 & 12 Vict. c. 63, s. 138, local boards in non-corporate districts were to sue and be sued in the name of their clerk. When proceedings were taken in the name of the clerk after the passing of the Act which incorporated the board, the court allowed them to be amended by substituting the local board for the clerk. See *Deeks v. Bailey*, 21 L. T. (N.S.) 581 ; *Bolingbroke (Lord) v. Townsend*, L. R. 8 C. P. 645 ; 37 J. P. 7 ; *Mills v. Scott*, L. R. 8 Q. B. 496 ; 37 J. P. 807 ; *Prior v. West Ham Local Board*, 15 L. T. (N.S.) 250.

When a local board were defendants in a suit in Chancery, and no answer was put in to the bill, all the members of the board having resigned, the Vice-Chancellor allowed the plaintiff to take a decree in the terms of the petition. *Harding v. Southampton Local Board*, 32 L. T. (N.S.) 250.

As the local authority are liable to proceedings in the courts of law, so they are entitled to the remedies of other suitors. Thus, where a local board had contracted with a sewage company for the latter to execute works for the removal of sewage, and the company so improperly carried on the works that they drove back large quantities of the sewage into the district, it was held that the local board might maintain a bill for an injunction, and that it was not required that the Attorney-General should file an information. *Nuncaton Local Board v. General Sewage Company*, L. R. 20 Eq. 127 ; 44 L. J. Ch. 561.

See the Rules of the Supreme Court, Order XXXI., rule 5, as to the interrogatories in actions by or against local authorities.

(b) See section 247, sub-section (7), ante, p. 327.

Notices.

Notices, &c.,
may be
printed or
written.

266. Notices, orders, and other such documents under this Act may be in writing or print, or partly in writing and partly in print ; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

It is presumed that this should be read *reddendo singula singulis*, so that the notices referred to must be such as each officer by virtue of his office can properly sign.

37 & 38 Vict. c. 89, s. 40, rendered the notice sufficient if it purported to be signed by the officer ; but as these words are omitted, the signature must be proved in any proceedings where the notice is of importance, unless it be admitted by the opposite party.

The provision in the text was of importance under 11 & 12 Vict. c. 63, in respect of non-corporate districts, where a certain number of members were required to sign

special documents. But as there are no such districts, but all are incorporated, and there is no requisition as to signature by members, the section seems to be one of extreme caution. Note to Section 266.

With regard to the use of block signatures, see *Osgood v. Nelson*, L. R. 5 H. L. 648; 41 L. J. Q. B. 329; *Blades v. Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. (N.S.) 378; 22 W. R. 643; 33 J. P. 261.

A notice under section 150 on a printed form filled up with the name of the clerk in print at the foot was held a sufficient signature in *Brydges v. Dix*, 7 T. L. R. 215. The court distinguished *Reg. v. Cowper*, 24 Q. B. D. 60, 533; 59 L. J. Q. B. 26, 265; 62 L. T. (N.S.) 583; 38 W. R. 408. It is doubtful whether signature by a clerk in the name of the clerk to the local board would be sufficient. See *France v. Dutton*, [1891], 2 Q. B. 208; 60 L. J. Q. B. 488; 64 L. T. (N.S.) 793; 39 W. R. 716.

267. Notices, orders, and any other documents(*aa*) required or authorised to be served under this Act may be served by delivering the same to or at the residence(*a*) of the person to whom they are respectively addressed, or where addressed to the owner(*b*) or occupier of premises(*b*) by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; (*c*) they may also be served by post(*d*) by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, order, or other document was properly addressed and put into the post. Service of notices.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description. (*e*)

(*aa*) It seems that these words include a summons which may therefore be served as provided by this section. *Reg. v. Mead* [1894], 2 Q. B. 124; 63 L. J. M. C. 128; 70 L. T. (N.S.) 766; 42 W. R. 442; 58 J. P. 448; 10 R. 217; 10 T. L. R. 413.

(*a*) This word appears to signify the place of abode, as in 11 & 12 Vict. c. 63, s. 150, but it is a word not free from ambiguity in its application. In *Blackwell v. England*, 27 L. J. Q. B. 124, the court said that the meaning of the word residence had to be determined with reference to the purpose of the statute in which it was used. Therefore, although for the purposes of the Poor Law Acts it meant the place where a person lived with his family, yet for the purpose of a Bill of Sale Act, which required the residence of an attesting witness to be stated, a business address was a sufficient statement of the residence. And see *Mason v. Bibby*, *infra*. And a person may have more than one residence; thus he may have houses in different places, each of which may be called his residence. *Walcot v. Boyfield*, 1 Kay, 534; 18 Jur. 570.

(*b*) See the definition of *owner* in section 4, *ante*, p. 6, and *premises* in the same section, *ante*, p. 6.

(*c*) 11 & 12 Vict. c. 63, s. 150, provided that in all cases in which any notice was required to be given to the owner or occupier of any premises, it should be sufficient to address the notice to them by the description of the "owner" or "occupier" of the premises, and that the notice should be served either personally or by delivering the same to some inmate of the owner or occupier's place of abode:—Held, that service of a notice by delivering it to the clerk of an owner at his place of business was sufficient, section 150 being merely in aid of service of notices; and per MARTIN, B., that the service was good under section 150, a place of business being a place of abode, and a clerk an inmate within section 150. *Mason v. Bibby*, 2 H. & C. 881; 33 L. J. M. C. 105; 9 L. T. (N.S.) 692; 12 W. R. 382; 10 Jur. (N.S.) 519; 28 J. P. 121. A similar service was held sufficient under this section in *Newport (Mayor, &c. of) v. Lang*, 57 J. P. 199.

Note to Section 267. (d) 11 & 12 Vict. c. 63, s. 150, allowed service by post only when the owner's place of abode was not within the limits of the district. There is no such distinction in the text.

(e) Notwithstanding this permission, it will be found in general to be most expedient to ascertain, if possible, the names of the owners and occupiers. Much embarrassment often arises in dealing with unknown persons.

Appeal.

Appeal in certain cases to Local Government Board.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days^(a) after notice of such decision,^(b) address a memorial to the Local Government Board, stating the grounds of his complaint,^(c) and shall deliver a copy thereof to the local authority,^(d) the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.^(e)

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order,^(f) direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

(a) The corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 43), s. 12, allowed only seven days.

(b) Notice of apportionment of expenses under section 150 having been served upon an owner, and demand of payment having been made after three months had expired, the owner, deeming himself aggrieved by the *decision* of the local authority, addressed a memorial, by way of appeal, to the Local Government Board stating the grounds of his complaint. On a rule for a prohibition to the Local Government Board, it was held by the Court of Appeal that an appeal lay to the Local Government Board, and that no prohibition ought to be granted. The court held that the demand of payment was the first decision from which an appeal would lie under this section. With regard to the power of the board on such appeal, BAGGALLAY, L.J., said: "That while they might properly refuse to travel beyond the grounds of complaint alleged in the memorial, yet that they had jurisdiction to inquire into the whole matter, and to inquire whether the aggregate amount of the expenses was unreasonable or unnecessary, as well as whether the proportion assessed upon the appellant was right." And BRETT, L.J., said: "It seems to me obvious from the construction of the Act, that the Local Government Board have power to inquire into every circumstance, however remote, which could reasonably determine the question whether it was equitable or not that a particular sum should be paid." The same learned judge also expressed an opinion that the decision of the Local Government Board was judicial, and that it was their duty to hear the parties presenting the memorial, though not necessarily by hearing oral evidence. It was their duty, however, to allow the appellant to know what was the answer of the local authority to his memorial, so as to let him reply to it. *Reg. (or Penarth) v. Local Government Board*, 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. (N.S.) 173; 31 W. R. 72; 47 J. P. 228.

Upon the hearing of a complaint to recover expenses under section 150 (*ante*, p. 176), the defendant objected that the places referred to in the notice showed that part of the work had been executed upon land belonging to private owners. The magistrate found as a fact that the land did not belong to private owners, but formed part of the street when the notice was given, and made an order for

payment of the amount apportioned. Upon application for a writ of *certiorari* upon affidavits which satisfied the court that the magistrate's finding was contrary to the fact, it was held, assuming that the magistrate had jurisdiction to inquire whether the case was within the statute, that the matter was at least partly within the statute, so as to give the magistrate jurisdiction and that the remedy was not by *certiorari*. (See section 262, *ante*, p. 350.) It was further held that the proper remedy was by appeal under this section against the decision of the local authority. *Ex parte Wake, Reg. v. Sheffield (Recorder of)*, 11 Q. B. D. 291 ; 52 L. J. M. C. 78 ; 31 W. R. 704 ; 47 J. P. 504 ; affirmed in C. A., 12 Q. B. D. 142 ; 53 L. J. M. C. 1 ; 50 L. T. (N.S.) 76 ; 32 W. R. 82 ; 48 J. P. 197 ; *Derby (Mayor, &c., of) v. Grudgings, ante*, p. 189.

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Note, however, that this is not necessarily the only method of appeal against a decision of a local authority. In *Ex parte Wake*, SMITH, J., pointed out that the appellant might have obtained a case under 20 & 21 Vict. c. 43, or might have appealed to quarter sessions under the next section (11 Q. B. D. 299). The remedy given by this section may, however, be more beneficial in cases where the ground of complaint is insufficient to obtain a legal remedy, or where such legal remedy, if obtained, would not satisfy the equity of the matter. In the case last quoted, the ground of the decision was that as part of the work was executed upon a street, there was some jurisdiction to make the apportionment. "The complaint," said BRETT, M.R., "is, that although the local authority might properly have determined to pave the street, and might properly have fixed the amount to be expended thereon, yet the sum expended was not on the street only, but was partly on the street and partly on private land, and that therefore the decision of the local authority was wrong, that is to say, that it fixed a wrong sum to lay before the surveyor to apportion, because it had not confined the sum to that which had been expended on the street, but had extended it to a larger sum, part of which had been expended elsewhere than on the street. The complaint, therefore, if anything, is, that the appellant is aggrieved by the decision of the local authority, and consequently it comes within the exact terms of section 268, which has pointed out the remedy the appellant has, namely, that in respect of that grievance he is to appeal to the Local Government Board. That is the particular remedy pointed out by the statute, and it being one for a grievance in respect of a new liability it is the only remedy which can be taken. If, therefore, the case was within the statute the magistrate, upon the summons before him for an order for payment, could not determine whether the decision of the local authority was right or wrong ; but could only inquire whether the proper notice had been given, and if it had, he could only make the order of payment. It was then said that the magistrate was bound to inquire whether the case was within the statute at all, and that if the local authority had assumed to cast a liability on a person to do that which was not within the Act, as to contribute to the expenditure of paving that which was not a street, and the magistrate found that that was so, and that it was not within the Act at all, then he had no jurisdiction to make the order. But, on the other side, it was said that if the magistrate had jurisdiction to make that inquiry he had jurisdiction in the matter, and if he came to a wrong conclusion there was an appeal to the quarter sessions, but that there it must end, and there was no appeal from the sessions. Now, it may be that the magistrate has power to inquire whether the case is within the Act at all, and if so, and he finds that it is not within the Act, it may be that he has no jurisdiction to make any further order. It may be that he is bound to make that inquiry, and that the only appeal from the conclusion he may come to is to the quarter sessions, or it may be that he has no power to make such inquiry at all. It seems to me to be unnecessary to decide that matter, for even if the magistrate had jurisdiction to inquire whether the case was or was not within the statute at all, and if supposing it was not, he had no jurisdiction to make any further order, I have come to the conclusion that this matter was not wholly without the statute. It would be without the statute if no order at all could have been made by the local authority, but if any part of the expenditure had been made in respect of a street within the meaning of the statute it is obvious that as to that part the local authority might fix the proper sum to be apportioned by the surveyor. Here it cannot be denied that a part of the expenditure was in respect of that which was a street within the meaning of the statute, and that the appellant was a frontager on that street, and it therefore follows that an order might be made upon him which would be an order within the meaning of the statute, and all that

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could be said against it would be that although it might lawfully be made it was a wrong order." And see *Bournemouth Commissioners v. Watts*, 14 Q. B. D. 87; 54 L. J. Q. B. 93; 51 L. T. (N.S.) 823; 33 W. R. 280; 49 J. P. 102. In that case an action was brought by a local authority to recover paving expenses under section 150. It appeared that part of the work, exceeding 50*l.*, had been done by contractors employed by the local authority, but that no written contract under the common seal of the authority had been made with them as provided by section 174. It was held by SMITH, J., that the objection, if valid, would have been an objection to the apportionment which could only have been raised in the time and manner provided by section 257. But according to the above cases the point might have been raised by appeal under this section. See also *Midland Railway Company v. Watton*, 17 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 34 W. R. 524; 50 J. P. 405.

In *Walthamstow Local Board v. Staines* [1891], 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. (N.S.) 430; 7 T. L. R. 446; the court held that an objection to the legality of certain charges for legal and other expenses included in an apportionment under section 150 could only be raised by way of appeal under this section. But it does not seem to have been pointed out to the court or considered that the objection might also have been taken by way of notice disputing the apportionment under section 257 and decided by an arbitrator.

In *Eccles v. Wirral Sanitary Authority*, 17 Q. B. D. 107; 55 L. J. M. C. 106; 34 W. R. 412; 50 J. P. 596; MATHEW, J., referring to the judgment of the Master of the Rolls in the *Penarth* case (*supra*), said: "I should have thought that there was much weight in the argument that the Local Government Board could not be treated as a court having exclusive jurisdiction in a case of this kind. It may be that if a party chooses to resort to that tribunal, he should be bound by what it does. But that it should otherwise be conclusive, is opposed to all principle. It is not a court. No procedure is pointed out, and the idea is that the Board are to pronounce what judgment they choose, though opposed to law and principles of equity, so long as they think it equity. That question is well deserving of very careful consideration, and far more elaborate argument than it was necessary to address to us in this case." The court (MATHEW and SMITH, JJ.) left it an open question whether, on a question whether a street was a highway repairable by the inhabitants at large, a frontager could appeal to the Local Government Board under this section.

Section 229, *ante*, provides for another appeal to the Local Government Board against an order of a rural authority.

(c) The memorial should be written on foolscap folio paper, and should be addressed to the President of the Local Government Board under cover to the Secretary of that Board. It should be signed by the party aggrieved, and should state his case clearly, but as concisely as possible.

(d) This provision is new. Under the former Act the local board might know nothing of the appeal to the Local Government Board until long after it had been made. Now the authority will have simultaneous notice.

(e) As to the powers and duties of the Board on such appeal, see *Reg. v. Local Government Board*, *supra*. See also *Cook v. Ipswich Local Board*, *ante*, p. 190. The order of the Board is only conclusive as to matters submitted to the Board. Thus, where on an apportionment of paving expenses under section 150, *ante*, the party addressed a memorial to the Board stating the grounds of his complaint to be that the works were unnecessary, and were improperly executed, and at too high a price, and that it was inequitable to charge him with the whole expenses he being the only frontager, and the Board held a local inquiry and confirmed the apportionment: it was held that nevertheless on proceedings to enforce the apportionment before the justices the party might take the objection that the street was a highway repairable by the inhabitants at large. *Seabrooke v. Grays Thurrock Local Board*, 8 T. L. R. 19.

(f) It is a question how this order can be enforced. It is not an order to which section 294, *post*, applies. But according to *Reg. v. Walker*, L. R. 10 Q. B. 355; 44 L. J. M. C. 169; 33 L. T. (N.S.) 167; 40 J. P. 230, the local authority might, perhaps, be indicted for a misdemeanor if they disobeyed it. And possibly obedience might be compelled by *mandamus*.

Section 295, *post*, provides for the publication of the order if the board should require it to be published.

269. Where any person deems himself aggrieved(*a*) by any rate made under the provisions of this Act,(*b*) or by any order, conviction, judgment, or determination of or by any matter or thing done by any court of summary jurisdiction,(*c*) such person may appeal therefrom, subject to the conditions and regulations following :(*d*)

Section 269.
Appeal to
quarter
sessions.
[Repealed as
to words in
italics by
47 & 48 Vict.
c. 43.]

- (1.) The appeal shall be made to the next court of quarter sessions(*e*) *for the county, division, or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made :*
- (2.) *The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof :*
- (3.) *The appellant, shall immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :*
- (4.) *Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody.*
- (5.) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment,(*f*) and to award costs between the parties to the appeal as, is, or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor ;(*g*) and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals :(*h*) Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made ;(*i*)
- (6.) In the case of other appeals the court of appeal may, if it thinks fit, adjourn the appeal, and on the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction, with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just :(*k*)

Section 269. (7.) The decision of the court of appeal shall be binding on all parties :*(l)* Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court.*(m)*

(a) As to who is a party aggrieved, see the note to section 253, *ante*, p. 336. A Town Improvement Act gave a right of appeal against any order of the commissioners to any person aggrieved by it. At a meeting of ratepayers it was resolved that the commissioners be empowered, out of the town funds raised under the Act, to prosecute an application to Parliament for a local Act. The application failed. The commissioners made an order for payment of the expenses out of the town funds. The mover of the resolution, empowering the commissioners to promote the bill appealed as a ratepayer against this order :—Held, that he was precluded from appealing as aggrieved by an act which he had sanctioned. *Harrup v. Bayley*, 6 E. & B. 218 ; 25 L. J. M. C. 107 ; 20 J. P. 627. In a recent case the mortgagee of licensed premises was held to be entitled to appeal, as a person aggrieved, against the refusal of justices to renew the license to the premises. *Garrett v. Middlesex JJ.*, 12 Q. B. D. 620 ; 53 L. J. M. C. 80 ; 32 W. R. 646 ; 48 J. P. 357. And see *Reg. v. London JJ.*, *infra* ; *Drapers' Company v. Hadden*, 57 J. P. 200 ; 9 T. L. R. 36.

(b) A question was raised in *Ricardo v. Maidenhead Local Board*, 2 H. & N. 257 ; 27 L. J. M. C. 73 ; 21 J. P. 359, whether an appeal lay against an order of justices ordering payment of a rate which has not itself been appealed against. The court did not decide the question. But the case was decided under 11 & 12 Vict. c. 43, section 103 of which enabled justices to enforce a rate by warrant without order. Under the present Act an order is necessary (see section 256, *ante*, p. 339), and there seems to be no reason why an appeal should not lie. It may still be doubted, however, whether on such appeal objection could be taken which goes to the validity of the rate as distinguished from the jurisdiction of justices to enforce it. It seems that an appeal does not lie, in the case of the poor rate, against a warrant to enforce payment. See *Reg. v. Kent (Justices of)*, *Ex parte Roots*, 16 L. T. (N.S.) 673. The objections which can be taken before justices when proceedings are taken before them to enforce payment of a rate are discussed at 47 J. P. 163. And see *Reg. v. Hannam* ; *Bates v. Plumstead (Overseers of)*, *ante*, p. 341.

The usual objections which are raised before justices are that the defendant was not in occupation of the rated premises, or that the premises are beyond the district.

(c) For the definition of the phrase “court of summary jurisdiction,” see section 4, *ante*, p. 22.

It is to be noticed that the words “order, conviction, judgment, or determination of or by any matter or thing done by,” may not enable a prosecutor in a criminal matter to appeal if the information laid by him is heard and dismissed. It is a general rule that, except where there is express statutory provision to the contrary, appeal does not lie against a dismissal or acquittal in criminal proceedings. In a recent case, *Payne v. Uxbridge Sanitary Authority*, 45 J. P. 327, information had been laid against the defendants for sending sewage into a tributary of the river Thames contrary to the provisions of the Thames Conservancy Act. That Act gave an appeal “if any person shall feel aggrieved by any adjudication or determination of any justice with respect to any penalty or forfeiture under the provisions of this Act.” The Middlesex Quarter Sessions held that this enabled them to hear an appeal from the decision of the justices who had dismissed the information. But the Queen’s Bench Division granted a prohibition, holding that the Act gave no power of appeal when the information was dismissed. *Reg. v. Middlesex (Justices of)*, 45 J. P. 420. The Highway Act, 1835, s. 104, gives a right of appeal to any person who shall think himself aggrieved by “any order, conviction, judgment, or determination made, or by any other matter or thing done by any justice or other person in pursuance of this Act.” A summons under section 72 against a person for wilfully obstructing a highway was dismissed, and it was held that the informant had no right of appeal. *Reg. v. London JJ.*, 25 Q. B. D. 357 ; 55 J. P. 56. Lord COLERIDGE, C.J., in his judgment, said : “I do not deny that this is a ‘determination made’ by the justice, and may be ‘a matter or thing done by the justice in pursuance of this Act ;’ and, therefore, if it were enough to find a word or two in a section of this kind which would carry an appeal, the argument for the appellants would be entitled to succeed, for there are words capable of the meaning contended

for. But that is not quite the way in which the section should be regarded, when we are asked to hold that there is an appeal after acquittal, which is *prima facie* not given by law. A person is prosecuted for some breach of the law, which is to be proved in a particular way. The general principle of law is that, if acquitted, he is not to be a second time vexed."

(d) The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 32, provided as follows: "Where a person is authorised by any past Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations contained in *this Act* with respect to an appeal to a court of general or quarter sessions: Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act. Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held *not less than fifteen days* after the day on which the decision was given upon which the conviction or order appealed against was founded."

It will be observed that the section just quoted gave a power of appeal against a conviction or order of a court of summary jurisdiction, according to the conditions or regulations of the Summary Jurisdiction Act or of this Act, as the appellant might think fit to elect.

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), repealed the text from the words "for the county," in sub-section (1) to the end of sub-section (4), and also sub-sections (6) and (7) *so far as relates to an appeal against an order or conviction of a court of summary jurisdiction*.

The same Act provides by section 6 that all appeals must now be brought subject to the conditions and regulations of the Summary Jurisdiction Act, 1879, and the procedure under that Act must now be followed in appeals under this Act against any conviction or order of a court of summary jurisdiction. See *Shingler v. Smith*, 17 Q. B. D. 49; 55 L. J. M. C. 147; 54 L. T. 759; 54 W. R. 490; 51 J. P. 152. The procedure here referred to is contained in section 31 of the Summary Jurisdiction Act, 1879, which is as follows:—

"Where any person is authorised . . . to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court subject to the conditions and regulations following:—

- "(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or, if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and
- "(2.) The appellant shall, within the prescribed time, or, if no time is prescribed, within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and
- "(3.) The appellant shall, within the prescribed time, or if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions, and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as that court deem sufficient; and

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- “(4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance, or giving such other security as aforesaid, release him from custody; and
- “(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof, may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and
- “(6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and
- “(7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.”

It should be observed that the foregoing section supersedes the procedure in the text only in so far as the latter relates to an appeal from a conviction or order of a court of summary jurisdiction. Other appeals, such as appeals against rates, will continue to be regulated by the text. Upon the construction of section 31 of the Summary Jurisdiction Act, 1879, there have been several important decisions which should here be noted. On the hearing of an appeal it appeared that two notices of appeal had been given within the prescribed time. The appellant elected to proceed upon the second, which was found bad for want of the prescribed recognizance. It was held that the first remained good, and that the appellant was entitled to proceed upon it after failing on the second. *Reg. v. Wolverhampton (Recorder of)*, 36 W. R. 650. Under sub-section (2) service of notice of appeal is sufficient if served on the justices' clerk, and it is not necessary that it should be addressed to the convicting justices. *Reg. v. Essex JJ.* [1892], 1 Q. B. 490; 61 L. J. M. C. 120; 66 L. T. (N.S.) 676; 40 W. R. 446; 17 Cox C. C. 521; 56 J. P. 375; *Reg. v. Glamorganshire JJ.* [1892], 1 Q. B. 621; 61 L. J. M. C. 169; 66 L. T. (N.S.) 444; 40 W. R. 436; 56 J. P. 437. The recognizance cannot be entered into before the notice of appeal has been given. *Reg. v. Anglesey JJ.* [1892], 2 Q. B. 29; 61 L. J. M. C. 143; 67 L. T. (N.S.) 322; 17 Cox C. C. 563; 56 J. P. 552. It may, however, be entered into before any court of summary jurisdiction whether in the same county or not, provided the court has the notice and grounds of appeal before it. *Reg. v. Durham JJ.; Ex parte Newton* [1895], 1 Q. B. 801; 64 L. J. M. C. 147; 72 L. T. (N.S.) 465; 43 W. R. 423; 59 J. P. 264.

(e) Where an adjourned sessions intervenes, the time must be calculated with reference to the first day of the next quarter sessions, and not with reference to the first day of the adjourned sessions. *Reg. v. Lancashire JJ.*, 34 L. T. (N.S.) 124; 40 J. P. 438. And see *Ravnsley v. Hutchinson*, L. R. 6 Q. B. 305; 40 L. J. M. C. 97; 23 L. T. (N.S.) 843; 19 W. R. 436; 35 J. P. 501.

The phrase “next session” means the next sessions at which an effectual trial can be had after the proper notices have been given. Therefore, where a rate was made on the 20th March, and the notices for the next quarter sessions, held on the 6th April, must have been given on the 22nd March, it was held that the appeal might be brought at the July quarter sessions without being entered and respited at the

April sessions. *Reg. v. Surrey (Justices of)*, 6 Q. B. D. 100 ; 50 L. J. M. C. 10 ; 43 L. T. (N.S.) 500 ; 29 W. R. 260 ; 45 J. P. 93.

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In another case all the preliminaries to an appeal at the next quarter sessions were duly observed, but at the sitting of the court the quarter sessions refused to allow the appeal to be entered, on the ground that by a rule of the sessions an appeal must be entered, and grounds of appeal deposited with the clerk of the peace three clear days before the first day of the sessions ; and the sessions made an order for 10*l.* costs to the respondents, under 12 & 13 Vict. c. 45, s. 6, as on an appeal which had not been entered or prosecuted. This order having been brought up and a rule to quash it obtained :—Held, that the rule of sessions amounted to imposing an additional condition to the appeal which the statute had not imposed, and was more than a mere rule of practice which it might be competent for the sessions to make ; and that the order for costs must be quashed. *Reg. v. Pawlett*, L. R. 8 Q. B. 491 ; 42 L. J. M. C. 157 ; 29 L. T. (N.S.) 390 ; 37 J. P. 775.

It has already been stated that the repeal of a portion of this section effected by the Summary Jurisdiction Act, 1884, is only a repeal so far as relates to appeals from convictions or orders of a court of summary jurisdiction. The definition of the term "court of summary jurisdiction," in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, extends its meaning so as to include justices acting under any statute or by virtue of his or their commission or by the common law. The new procedure as to appeals will, therefore, apply to nearly every act or decision of justices under this Act. See *Reg. v. Glamorganshire JJ.*, *supra*, and the cases cited at p. 22, *ante*. But there are some matters to which it will not apply, and with regard to which the procedure prescribed in the text must still be followed. Notably this is the case in appeals against rates, which are not convictions or orders. In *Reg. v. Barnet Rural Sanitary Authority*, 1 Q. B. D. 558 ; 45 L. J. M. C. 105 ; 35 L. T. (N.S.) 362 ; 40 J. P. 341 ; an order was made on the appellants, under section 48 of this Act, on the 6th September, and served on them on the 24th. The appellants on the 2nd of October served on the respondents notice of appeal to the sessions. It was held that the time for notice of appeal ran from the date of the decision, and not from the service of the order of justices, and consequently that the notice was too late. BLACKBURN, J., said : "Where the appeal is against a rate, the 'cause of appeal' would *primâ facie* be upon notice of the rate, but where the appeal is from any order or conviction, one would certainly *primâ facie* say that as soon as the order is made the party has a right to appeal, and is not bound to wait until the order is served."

It is to be noticed also that the new enactment requires that the notices of appeal should be in writing. This was formerly unnecessary.

Where the quarter sessions have refused to hear an appeal on the ground of the insufficiency of the notices, and a *mandamus* is applied for to compel them to hear, the court will, upon the argument against the rule, determine the question of the sufficiency or insufficiency of the notices. *Curtis, Ex parte*, 3 Q. B. D. 13 ; 47 L. J. M. C. 35 ; 26 W. R. 210 ; 42 J. P. 87.

(f) Therefore, it was held that the sessions might quash a rate which showed by the estimate prefixed to the rate that it was made for purposes which were illegal. *Reg. v. Workshop Local Board*, 21 J. P. 451.

(g) 41 Geo. 3, c. 23, ss. 1—6, and 6 & 7 Will. 4, c. 96, s. 7, provide for the amending and quashing of poor rates, and 17 Geo. 2, c. 38 ; 41 Geo. 3, c. 23, s. 8 ; and 6 & 7 Will. 4, c. 96, s. 7, provide for the awarding and recovery of costs in appeals against such rates.

(h) That is, in one of the following modes :—(1) By indictment for disobedience of the order of sessions ; (2) by order enforced as provided by 12 & 13 Vict. c. 45, s. 5, *i.e.*, by distress under 11 & 12 Vict. c. 43, s. 27 (but see *Reg. v. Huntley*, 23 L. J. M. C. 106) ; and (3) by removal of the order into the Queen's Bench Division to be thereafter enforced as a rule of court by the ordinary writ of execution (12 & 13 Vict. c. 45, s. 18).

(i) This provision is the same as that in 41 Geo. 3, c. 23, s. 1, respecting the poor rate. Under that section it was held that where a rate was reduced on appeal, and the person rated had during the appeal paid on the unreduced assessment, the overseers might, in subsequent rates, credit him for the excess paid without an order of sessions. *Reg. v. Parker*, 7 E. & B. 155 ; 26 L. J. Q. B. 313 ; 3 Jur. (N.S.) 771 ; 21 J. P. 549. And see also as to the construction of the section, *Reg. v. JJ. of Kingston*, 27 L. J. M. C. 199 ; 23 J. P. 4, 5.

(k) This sub-section and the next are repealed so far as relates to an appeal against an order or conviction of a court of summary jurisdiction : 47 & 48 Vict. c. 43.

Note to Section 269. Section 5 of that Act substitutes the corresponding provisions of the Summary Jurisdiction Acts.

With reference to the provision as to costs, it must be observed that this enactment gives no power to award costs against convicting justices. *Reg. v. Goodhall*, L. R. 9 Q. B. 557; 43 L. J. M. C. 119; 38 J. P. 616. An information was laid by M., who was the surveyor of a local board, but without reference to his official position, against H., for the violation of a bye-law of such local board; and upon the hearing H. was convicted and ordered to pay 7l. 10s. to the local board for costs. H. thereupon gave notice of appeal to the convicting justices and to M. Both the justices and M. handed over their notice to the attorney of the local board, and he conducted the defence on behalf of the board. The quarter sessions quashed the conviction with costs; and the clerk of the peace, directing the costs to be paid by the respondents, the costs were taxed, and being unpaid, an application was made to justices for a warrant against the goods of M. for the amount:—Held, first, that the order of quarter sessions was bad in ordering the costs to be paid by the respondents, who were the convicting justices and M., and that it should have been made upon the local board, who were the parties appealed against; and, secondly, that as the order was valid, except as to that part which related to costs, it should be quashed as to that part only. *Reg. v. Davidson*, 24 L. T. (N.S.) 22; 35 J. P. 500.

As to the costs on reference of appeals to arbitration, see *Southampton Gas Light and Coke Company v. Southampton Union (Guardians of)*, 2 Q. B. D. 371; 46 L. J. M. C. 238; 36 L. T. (N.S.) 548; 25 W. R. 671; 41 J. P. 645; *West London Extension Railway Company v. Fulham Union*, L. R. 5 Q. B. 361; 36 L. J. Q. B. 178; 22 L. J. (N.S.) 523; 36 J. P. 55; *Reg. v. Middlesex JJ.*, L. R. 6 Q. B. 220; 40 L. J. M. C. 109; 24 L. T. (N.S.) 131; 19 W. R. 744.

As to taxing costs out of sessions, see *Reg. v. Phillips*, 29 L. T. (N.S.) 100; 37 J. P. 824. *Midland Railway Company v. Edmonton Union*, 11 T. L. R. 448, affirming the judgment of C. A. [1895], 1 Q. B. 357; 64 L. J. Q. B. 113; 11 T. L. R. 146; reversing 63 L. J. M. C. 38; 70 L. T. (N.S.) 355; 17 Cox C. C. 731; 10 R. 604.

(l) The procedure at the hearing of the appeal is regulated by Baines's Act (12 & 13 Vict. c. 45), to which reference should be made.

(m) A *certiorari* is not now necessary to bring up the case. See the Summary Jurisdiction Act, 1879, s. 40.

Upon an application to enter and respite an appeal, the quarter sessions have no power to state a special case; and the court will take no notice of a case so stated. Where the sessions granted an application to enter and respite appeals against poor rates, subject to a case, the court heard the arguments, but after consideration, and although no objection was raised by either side, declined to express an opinion in a case reserved on such an order. *Reg. v. Sutton Coldfield (Overseers of)*, L. R. 9 Q. B. 153; 29 L. T. (N.S.) 840; 22 W. R. 324; 38 J. P. 166; S. C. *Reg. v. London and North Western Railway Company*, 43 L. J. M. C. 57.

After notice of appeal, a case may be stated by consent, without going to quarter sessions, under 12 & 13 Vict. c. 45, s. 11. Where this is done the case should contain a statement of the agreement of the parties that judgment in conformity with the decision of the court may be entered at quarter sessions in the manner provided by the section, otherwise it will be struck out of the paper. *Peterborough (Corporation of) v. Thurlby (Overseers of)*, 8 Q. B. D. 586.

A case contained the following paragraph: "If the court should be of opinion that the appeal ought to have been allowed and the order quashed, judgment for the appellant is to be entered accordingly at the next quarter sessions." Before hearing counsel the court dismissed the appeal and affirmed the order, holding that the sessions ought not to state anything about afterwards entering the appeal at sessions as if the whole jurisdiction rested with them, and an opinion only was asked of the High Court. The statement of the case was, however, an end of the jurisdiction of the sessions, which had nothing further to do with the matter. No opinion was given on the merits. *Reg. v. Headington Union*, 47 J. P. 756.

A special case stated by quarter sessions contained the following clause: "The court are in all respects to exercise the power of the sessions to confirm, amend, alter, vary, modify, or reverse their decision in such manner and to such extent as to such court shall seem expedient and proper; costs to follow the event." The court quashed the order, but the judgment was silent as to the costs. In an action to recover the costs incurred in the argument of the case, and also the costs of certain applications made to the quarter sessions from time to time until the judgment of the Queen's Bench Division in the plaintiffs' favour was obtained:—Held, (1) that the

words "costs to follow the event" referred and were intended to refer to the costs claimed by the plaintiff; (2) that these words, though contained in a special case, amounted to an agreement between the parties, and rendered the defendant liable to pay the costs; and (3) that the taxation of the costs was not a condition precedent to the plaintiff's right to bring an action to recover them. *Lear v. Botting*, 44 L. T. (N.S.) 58; 45 J. P. 240.

Note to
Section 269.

It was held that an appeal did not lie from the decision of the Queen's Bench Division on a case stated under this section, unless leave to appeal was given under 36 & 37 Vict. c. 66, s. 45. *Reg. v. Swindon Local Board*, 42 L. T. (N.S.) 614; 49 L. J. Q. B. 572; 28 W. R. 804; 44 J. P. 505. In that case an order had been made by justices upon one H. to pay expenses under section 150 of this Act. H. appealed to quarter sessions, and the sessions quashed the order subject to a special case for the opinion of the Queen's Bench Division. The High Court having affirmed the judgment of quarter sessions, the local board appealed to the Court of Appeal. It was held that the High Court in hearing the case stated were exercising an appellate jurisdiction, as the case came before them under the Public Health Act, 1875, s. 269, sub-sect. (7). The appeal was, therefore, an appeal from an inferior court within section 45 of the Judicature Act, 1873, and the decision of the High Court was final unless leave to appeal were given. But leave to appeal was not necessary when the Queen's Bench Division have decided with reference to a special case stated by quarter sessions when the court is exercising its common law jurisdiction. *Reg. v. Savin*, 6 Q. B. D. 309; 29 W. R. 638; *Reg. v. Illingworth*, 53 L. J. M. C. 60; 32 W. R. 451. After notice of appeal against a poor rate had been given to quarter sessions, the parties agreed under 12 & 13 Vict. c. 45, s. 11, to state a case for the opinion of the Queen's Bench Division, judgment to be entered by the court of quarter sessions in conformity with that opinion:—Held, that the opinion given by the Queen's Bench Division was an order within the meaning of section 19 of the Judicature Act, 1873, and was, therefore, subject to appeal, and that the order was interlocutory and not final, as the case had to be sent back for judgment to be entered by the court of quarter sessions. *Peterborough (Mayor of) v. Stamford Union*, 12 Q. B. D. 1; 53 L. J. M. C. 33; 50 L. T. (N.S.) 189; 32 W. R. 548; 48 J. P. 373. This decision was followed in *Holborn Union v. Chertsey Union*, 15 Q. B. D. 76; 54 L. L. M. C. 137; 53 L. T. (N.S.) 656; 33 W. R. 698; 50 J. P. 36. There it was held that an appeal lies to the Court of Appeal from the decision of a Divisional Court upon a case stated under 12 & 13 Vict. c. 45, s. 11, on an appeal from an order of justices to the quarter sessions; it not being a decision of a Divisional Court on an appeal from petty or quarter sessions within the meaning of section 45 of the Judicature Act, 1873, and being an "order" within the meaning of section 19 of that Act. And see to the same effect *Dewsbury and Heckmondwike Waterworks Board v. Penistone Union*, 2 T. L. R. 375. Now it is provided by the Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 2, that every case stated by a court of quarter sessions otherwise than under 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, for the consideration of the High Court, shall be deemed to be an appeal, and shall be heard and determined accordingly. This brings in section 1 (5), providing that in all cases where there is a right of appeal to the High Court from any court or person the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court; and the determination thereof by the Divisional Court shall be final unless leave to appeal is given by that court or by the Court of Appeal.

It may be convenient here to set out the provisions of the 12 & 13 Vict. c. 45, as to references to arbitration on appeals to quarter sessions. It is provided by section 12 that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate, or other matter (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties by themselves or their attorneys, and by order of a judge of Her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons; and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this Act and to enforcing awards or umpirages thereupon,

**Note to
Section 269.**

and to setting aside the same, as are authorised by the Act of 9 & 10 Will. 3, c. 15, with regard to the cases therein provided for; and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may on the application of either party be enrolled among the records of the said court of sessions. By section 13 it shall be lawful for any court of general or quarter sessions before which any appeal (except against a summary conviction, &c.) shall be brought, to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court: Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the court of general or quarter sessions to enter continuances and hear the appeal.

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

Alteration of Areas.

270. The following enactments shall be made as to alteration of Section 270.
areas :

- (1.) The Local Government Board, by provisional order, *(a)* may dissolve any local government district, *(b)* and may merge any such district in some other urban or rural district or districts; or it may by provisional order *(a)* declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district; or it may by provisional order *(a)* declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; *(c)* and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made unless and until the Local Government Board by provisional order *(a)* otherwise directs :
- (2.) In the case of a borough comprising within its area the whole of an Improvement Act district, or having an area co-extensive with such district, the Local Government Board by provisional order *(a)* may dissolve such district *(d)* and transfer to the council of the borough all or any *(e)* of the jurisdiction and powers of the improvement commissioners *(f)* of such district remaining vested in them at the time of the passing of this Act :
- (3.) The Local Government Board may by order dissolve any special drainage district *(g)* constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the Local Government Board may by provisional order *(a)* dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated. *(h)*

Powers of
Local Govern-
ment Board
in relation to
alteration of
areas.

The provisions of this and the succeeding sections are to a large extent superseded by those of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, section 57 of which entrusts to the county council important powers as to the alteration of the boundaries of districts. See the section and the notes thereto, *post*. The provisions of the text are not, however, repealed.

**Note to
Section 270.**

(a) See section 297, *post*, p. 391.

(b) See the definition in section 4, *ante*, p. 4. Many local government districts were formed under 21 & 22 Vict. c. 98, for the purpose of avoiding the Highway District Act, 1862, and consequently many were purely rural districts where the provisions of the sanitary laws as regards the machinery for working them were not requisite. A stop was put to this proceeding by 26 & 27 Vict. c. 17, which required the approval of the Secretary of State to the adoption in any place where the population was less than 3,000, and by 35 & 36 Vict. c. 79, s. 25, whereby the consent of the Local Government Board was required in every case for the adoption of the Act. Hence, as it may be convenient that small districts now existing should be dissolved, the power is conferred upon the Local Government Board of making such a dissolution, though their order must be confirmed by Parliament. See section 297, sub-section (3), *post*, p. 391. 26 & 27 Vict. c. 17 enabled such districts, as those referred to, to be abandoned, but as that Act has been repealed, they can only now be dissolved by the Local Government Board as in the text. It has been held that by the dissolution of a highway board, the board, though it ceases to have any control over the highways in its district, does not cease to exist as a corporate body for the performance of its other duties, such as those of suing or being sued, and of acting generally for the purpose of winding up its affairs. *Reg. v. Essex JJ.*, 11 Q. B. D. 704; 52 L. J. M. C. 124; 49 L. T. (N.S.) 394; 32 W. R. 220. See, however, section 275, *post*.

(c) No provision is made here as to a borough or an Improvement Act district, but see sections 54, 57, of the Local Government Act, 1888, *post*.

(d) According to section 10, *ante* p. 28, all the sanitary powers under the Improvement Act are transferred to the town council. But the commissioners under their Act may have powers not so transferred, and their district may remain such for the execution of these powers. Hence the Local Government Board may dissolve the district and transfer these powers to the council, when this is deemed expedient.

This will not, however, be done except upon application by some party, which should be made in writing upon foolscap folio paper, and be signed by the clerk of the authority or of the commissioners, addressed to the President of the Local Government Board under cover directed to the Secretary.

It is probable that this sub-section has now no application, having regard to section 52 of the Local Government Act, 1888, and the orders made under it. See the section and the notes thereto, *post*.

(e) As all or any of the powers are to be transferred, it is to be presumed that some may be abandoned, for the district must apparently be dissolved altogether.

(f) See the definition in section 4, *ante*, p. 4.

(g) These districts were heretofore formed under the Sewage Utilization Acts (29 & 30 Vict. c. 90, s. 5, and 30 & 31 Vict. c. 113, s. 6). In future they may be formed under section 277, *post*, p. 378.

(h) Note that where there has been no loan the dissolution may be effected by a simple order, as to which see section 295, *post*; but where a loan has been raised there must be a provisional order to be duly confirmed by Act of Parliament. It is to be assumed that where the loan has been wholly liquidated a provisional order is not required.

Local Govern-
ment Board
may by pro-
visional order
constitute
local govern-
ment district.

271. The Local Government Board (a) may, by provisional order, declare any rural district, or any portion of any rural district or districts, to be a local government district; and from and after the commencement of the order, (b) the district or portion of the district or districts therein referred to shall become a local government district, (c) and shall be subject to the jurisdiction of a local board, to be elected in manner provided by Schedule II. to this Act. (d)

The Local Government Board may, by any order constituting a local government district under this section, divide such district into wards for the election of members of the local board. (e)

The provisions of this section are practically superseded by sections 57, 59, of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, but they are not expressly repealed.

(a) The Board can take this step *ex mero motu*, but they can only frame a provisional order, and prior to their doing so must institute a public inquiry. See section 297, **Note to Section 271.**
sub-section (1), *post*.

(b) This date is usually specified in the order, but see section 275, *post*, p. 376.

(c) See the definition in section 4, *ante*, p. 4. A serious nuisance having been admittedly caused by the mode of dealing by a rural authority with the sewage of the district, the dissolution of the rural authority and the constitution by order of the Local Government Board of an urban authority over the district, does not absolve the new board from liability to an injunction for continuing the nuisance without taking any effectual steps to remedy it. Eleven months having elapsed since the constitution of the new board, the operation of the injunction was suspended for two months only. *Taylor v. Friern Barnet Local Board*, W. N. (1885), p. 7.

(d) This Schedule is now repealed by section 89 and Schedule II. of the Local Government Act, 1894, *post*.

(e) See as to the division of districts into wards, section 57 of the Local Government Act, 1888, *post*.

272. The owners and ratepayers of any place situated in any rural district or districts, (a) and having a known and defined boundary, (b) may, by a resolution passed in manner provided by Schedule III. to this Act, declare that it is expedient that such place shall be constituted a local government district; (c) and the Local Government Board may, if it thinks fit, by order, (d) made not less than six weeks after the receipt of a copy of such resolution by the said Board, declare such place to be a local government district, (e) and from and after the commencement of such order, (e) such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected in manner provided by Schedule II. to this Act. (f)

Local Government Board may by order constitute local government district in pursuance of a resolution of owners and ratepayers.

A petition (g) may be presented to the Local Government Board from any place so situated as aforesaid (h) and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, (i) and shall be supported by such evidence as the Local Government Board may require. (k) The Local Government Board may, after local inquiry as to the genuineness of the petition, (l) and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, (m) and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne. (n)

Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary. (o)

This section has not been repealed, but its provisions are practically superseded by section 57 of the Local Government Act, 1888, *post*, which confers on county councils important powers as to the alteration and definitions of boundaries of districts and the conversion of all or part of a rural district into an urban district. See the section and the notes thereto.

(a) There must be twenty ratepayers and owners resident in the place. See Schedule III. (1). It will be noticed that the district may be formed out of two rural districts, that is, out of two unions; but it is not easy to understand how a place with a known and defined boundary can be part of two unions.

(b) This is a very vague term. It is not clear by whom the boundary is to be known. Doubtless general reputation must be referred to, and that is frequently a matter of considerable uncertainty. The boundaries of parishes are for the most part well known, and so are those of townships and chapelries, especially where these make their own poor rate separately. There are also many places where the

**Note to
Section 272.**

boundaries have been defined by statute. And it occasionally happens that districts have been settled by orders in council and similar authority under the general statutes applicable to new ecclesiastical parishes. In these cases the text can be safely applied. Thus a district formed for ecclesiastical purposes under 6 & 7 Vict. c. 37, consisting of parts of two townships, each of which separately maintained its own poor and highways, was held to be "a place having a known and defined boundary." *Reg. v. Northoverton and Clayton (Ratepayers of)*, L. R. 1 Q. B. 110; 7 B. & S. 110; 35 L. J. Q. B. 90; 30 J. P. 181. In another case the parish of L., containing 1,400 acres, comprised within its area the corporate borough of L., which was in extent 100 acres. The parliamentary borough of L. comprised the whole of the parish of L. and part of another parish. It was held that the parliamentary borough, including within its limits a less place, viz., the parish of L., was not within the corresponding provisions of the Act of 1858 but that the parish of L. was a place having a known and defined boundary. *Reg. v. Hardy (Secretary of State for the Home Department)*, L. R. 4 Q. B. 117; 9 B. & S. 926; 38 L. J. Q. B. 9; 19 L. T. (N.S.) 173; 33 J. P. 21. In order that a district may be a place within the meaning of this section, it is not necessary that it should be a legal district having a legal boundary of the whole enclosed area; it is sufficient if the place has an actual known and defined boundary, or one that is physical, visible, and notorious, so that there may be no mistake as to the limits within which the Act is to apply. Certain small portions of the township of R. lay within and were surrounded by the adjoining township of G. It was held that the township of G., together with the enclosed portion of R., was within the meaning of the section. *Reg. v. Local Government Board*, or *Reg. v. Grasmere*, L. R. 8 Q. B. 227; 42 L. J. Q. B. 131; 21 W. R. 445.

(c) See the definition in section 4, *ante*, p. 4.

(d) This is a simple order of the Board, as to which see section 295, *post*. It will be seen that the Board have a discretion as to the constitution of this district.

As to the forwarding of the copy of the resolution, see Schedule III. (7), *post*.

(e) See section 275, *post*, as to the commencement of the order. As to the costs of these proceedings, see Schedule III. (8), *post*.

(f) This schedule is now repealed by section 89 and the Second Schedule of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*.

(g) The petition should be in writing on foolscap paper, addressed to the President of the Local Government Board, under cover to the Secretary, and the names should be affixed at the foot of the petition as nearly as practicable.

(h) That is in a rural district or districts. The place may be situated in two districts, as where it runs into two unions. The term *place* is very indefinite. As to the interpretation of this word in statutes, see *Reg. v. Charlesworth*, 20 L. J. M. C. 181; *Smith v. Redding*, L. R. 4 Q. B. 480; 30 J. P. 518; *Rice v. Slee*, L. R. 7 C. P. 378; 36 J. P. 454.

(i) The owners are omitted here, probably because they cannot readily be ascertained, and this is only a preliminary to a formal inquiry.

(k) In strictness the Board can make no requisition until the petition has been presented, but it may be well for the promoters of the proposal to apply to the Board for instructions before any proceedings are commenced.

(l) See as to such inquiry, section 293, *post*, p. 389.

(m) A question was raised but not decided whether under the corresponding provisions of 21 & 22 Vict. c. 98, s. 16, a place might be included within the boundaries as settled which was not within those proposed in the petition. *Smith v. Todmorden Local Board*, 1 B. & S. 412; 30 L. J. Q. B. 305; 4 L. T. (N.S.) 509; 25 J. P. 518. It was properly contended that such extension would be unfair upon parties in the extended limit, inasmuch as they could not oppose the petition. But in the case just cited the proceedings taken to question the legality of the order were too late. See section 295, *post*, as to the conclusive character of the order. It should be observed that the alteration of boundaries by the Local Government Board does not affect the boundaries of parliamentary divisions or the exercise of the parliamentary franchise. *Jones v. Reeve*, 1 T. L. R. 178. See also the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 59 (2), *post*, as to the effect of orders under that Act.

(n) See section 294, *post*, p. 389, as to the means of enforcing this order. The costs referred to in this section appear to be those of the petitioners and their opponents, but see section 294, *post*, p. 389.

(o) The proceedings will be conducted according to the provisions in Schedule III., and if a resolution be passed adopting the Act, the subsequent proceedings will be the same as under the first paragraph.

273. Where not less than one-twentieth of the owners(a) and ratepayers of any place (such twentieth to be one-twentieth in number of the owners and ratepayers(b) of the place(c) taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place),(d) in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection. Section 273.
Objection to
resolution.

Such petition shall be subscribed by the owners and ratepayers presenting the same,(e) and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.(f)

The Local Government Board may after local inquiry(g) make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.

See the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 57, *post*, and the note to the last section. In so far as the preceding section is superseded, this section will also be superseded.

(a) See the definition of *owner* in section 4, *ante*, p. 6. The term *ratepayers* is not here defined, but the last section refers to persons "rated to the relief of the poor and resident within the boundaries." This is probably the explanation of the term as here used.

(b) It is to be observed that the petition under this section is to come from ratepayers and owners, and if the reference be made to the objectors numerically, there must be one-twentieth of the owners and ratepayers taken together. In many cases it will be impossible to determine the total number of these within a reasonable time. It is easy to ascertain the ratepayers, but in populous places it is very difficult to discover all the owners, and unless they are all discovered the proper numerical proportion cannot be determined. The difficulty will not be so great in reference to the property, as that can be ascertained from the poor rate with reasonable accuracy.

(c) This applies to the whole of the proposed district, therefore if all the ratepayers and owners of any particular part of it should object, their objection will be unavailing unless they constitute one-twentieth part of the whole proposed district.

(d) This means the property rateable to the poor rate, and according to *Baker v. Marsh*, 4 E. & B. 144; 24 L. J. Q. B. 1; 19 J. P. 117, will doubtless be construed to apply to the *net annual value* of the property.

(e) This petition should be prepared and sent as described in note (g) to the last section. The subscription must be by the parties themselves; it is very doubtful whether an agent is competent to subscribe for them. See *Toms v. Cuming*, 8 Scott, N. R. 910; 7 M. & G. 88; 14 L. J. C. P. 67; 9 Jur. 90; 1 Lutw. R. C. 200; Barr. & Arn. 347; *Brown v. Toms* [1891], 1 Q. B. 253; 60 L. J. Q. B. 38; 64 L. T. (N.S.) 114; 55 J. P. 359; 1 Scott Fox 196; 7 T. L. R. 49.

(f) This plan need not be on a large scale. A folio foolscap plan will suffice in ordinary cases.

(g) See section 293, *post*, p. 389. Thus there may be two inquiries. It is most advisable, therefore, that when the boundaries are inquired into on the petition from the ratepayers, the objections of the owners and ratepayers here contemplated should be brought forward so as to render this second inquiry (expensive and irritating as it is likely to be) unnecessary. As to the cost of this inquiry, see section 294, *post*.

274. Any owner or ratepayer(a) who disputes the validity of the vote for(b) the adoption of the resolution may appeal(c) within six weeks from the declaration of the decision of the meeting(d) to the Appeal to
Local Govern-
ment Board in

Section 274. Local Government Board, setting forth the grounds on which he disputes the validity of the vote; and the Local Government Board may, on such appeal, after local inquiry, (e) make such order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal. (f)

case of alleged
invalidity of
vote.

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof (g) or to any proceedings on which such order was founded, unless the objector gives fourteen days' notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district. (h)

See the note to section 272, *ante*, p. 373. In so far as that section is superseded by section 57 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, the provisions in the text will have no application.

(a) The word *owner* is defined in section 4, *ante*, p. 6. As to the term *ratepayers*, see note (a) to last section.

(b) No appeal is given from the vote rejecting the adoption of the Act. This is not necessary, inasmuch as the proposal may be renewed at any time, or the Local Government Board may, by provisional order, form the district themselves if they should think it expedient.

(c) This appeal should be prepared and sent in the same manner as a petition under section 272. See note (g) to that section.

(d) See as to this Schedule III. (6), *post*. The declaration referred to appears to be that of the summoning officer. 26 & 27 Vict. c. 17, s. 3, specified the time and the date of the resolution adopting the Act, but there was some doubt as to this when a poll was taken.

(e) See as to this, section 293, *post*, p. 389.

(f) It will be seen that the order will dispose of two sets of questions: (1) those arising on the appeal; and (2) those on the validity of the vote. The first will relate to the qualification of the appellant, the due promptitude of the appeal, the sufficiency of the statement, and matters of a like character. The second will involve all the inquiries arising out of the adoption of the resolution.

(g) By section 295, *post*, re-enacting 21 & 22 Vict. c. 98, s. 81, this order of the Local Government Board is declared to be binding and conclusive. Accordingly, the Court of Queen's Bench decided that when an appeal had been made under the corresponding section of 21 & 22 Vict. c. 98, to the Secretary of State, and he had given his decision, it was conclusive, though on the face of the order the *ratio decidendi* was doubtful. *Ex parte Bird*, 1 E. & E. 931; 28 L. J. Q. B. 223; 5 Jur. (N.S.) 1009; 7 W. R. 476; 23 J. P. 691. Nevertheless, if there be any defect in the original proceedings so as to prevent the jurisdiction of the Local Government Board, the order may, it is presumed, as in the cases of orders of justices, be impeached on that ground.

(h) See as to this, section 272, *ante*, p. 373, and the next section. This provision is adopted from 21 & 22 Vict. c. 98, s. 21, and upon that section the Court of Queen's Bench refused to entertain an objection to the legality of an order of a Secretary of State after the expiration of the time mentioned in the order which he had made. *Smith v. Todmorden Local Board*, *ante*, p. 374.

General provisions as to
orders.

275. Every order made by the Local Government Board under this part of this Act shall specify a day on which such order shall come into operation (in this Act referred to as the commencement of the order); and from and after (a) the commencement of the order all the

powers, rights, duties, capacities, liabilities, obligations, and property which under this Act are exercisable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district: (b) Provided that in the case of the constitution of a new local government district, all the powers, rights, duties, capacities, liabilities, obligations, and property, which under this Act (c) are exercisable by or attaching to or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exercisable by, attached to, and vested in such authority or authorities, until the day of the first meeting of the local board (d) for the district so constituted.

Any order made in pursuance of this part of this Act, may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts, parishes, or other places in consequence of the exercise of any powers conferred by this part of this Act, (e) and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this part of this Act, the order shall prescribe the number of members to be elected for the district when altered.

The Local Government Board may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

A similar provision is contained in section 59 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, in respect of orders under that Act. The provisions in the text will, of course, apply only to such orders (if any) as may hereafter be made by the Local Government Board.

(a) This enactment removes the doubt which existed under the former Acts as to when the formation took complete effect.

(b) See as to the transfer of liabilities, *Sinnott v. Whitechapel Board of Works*, 3 C. B. (N.S.) 674; 22 Jur. 263; 27 L. J. C. P. 177; 6 W. R. 289; 22 J. P. 290; *Pettinard v. Metropolitan Board of Works*, 19 C. B. (N.S.) 489; 34 L. J. C. P. 301; 12 L. T. (N.S.) 764.

(c) A decree was made in 1875 against the corporation of B. as the sanitary authority of B., granting a perpetual injunction to restrain them from allowing sewage to flow into a river so as to be injurious to health or a nuisance to the plaintiffs; but the injunction was suspended for five years, to give the corporation an opportunity to execute certain works. After the expiration of that time the plaintiffs desired to enforce the injunction, but in the meantime the B. T. & R. district board had been constituted under this Act as the sanitary authority of the district, in the place of the corporation of B. The plaintiff brought an action against the B. T. & R. board, claiming a declaration that they were entitled to the same benefit of the decree as against the defendants in the present action as if they had been defendants in the former suit. The defendants demurred:—Held (reversing the decision of BACON, V.C.), that the B. T. & R. board were not by this section made subject to any of the liabilities of their predecessors except those attaching under the Act, and were not, therefore, bound by the decree against them, and that there being no allegation of any nuisance committed by the B. T. & R. board, the plaintiffs had no cause of action, and the demurrer must be allowed. *Attorney-General v. Birmingham Tame and Rea Drainage Board*, 17 Ch. D. 685; 50 L. J. Ch. 786; 44 L. T. (N.S.) 906; 29 W. R. 793; 46 J. P. 36.

(d) See as to this Schedule I. (12), *post*. This proviso, which is new, prevents the

**Note to
Section 275.**

confusion which arose when the new district was formed, but there was no body legally empowered to act in it previous to the election of the board.

(e) See further, section 304, *post*, p. 398, as to the adjustment of accounts between districts. This order will be final; see section 295, *post*, p. 393.

Local Govern-
ment Board
may invest
rural autho-
rity with
powers of
urban
authority.

276. The Local Government Board may, on the application(a) of the authority of any rural district, or of persons rated to the relief of the poor,(b) the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value(c) of such district, or of any contributory place therein,(d) by order(e) to be published in the *London Gazette*, or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any(e) of the powers, rights, duties, capacities, liabilities, and obligations, of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers, rights, duties, liabilities, capacities, and obligations are to be exercised and attach: Provided, that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

See further as to investing a rural authority with urban powers. 53 & 54 Vict. c. 59, s. 5; 56 & 57 Vict. c. 73, s. 25, *post*.

(a) This application should be made in writing upon foolscap folio paper addressed to the President of the Board, under cover to the Secretary, and if it comes from the rural authority, should be signed by their clerk. If it comes from others, the names should be affixed to the application as near as conveniently may be.

(b) It is immaterial how long they have been rated, or whether they have or have not paid their rates.

(c) This will appear from the valuation list of the union or of the contributory place.

(d) The application may come not only from the occupiers of one-tenth in value of the whole of the district, but also from *one-tenth* in value of any parish or other contributory place within it, however small; but then the powers will only extend to the part from which the application comes. See the proviso at the end of the section.

(e) Note these words. Any single power conferred by this Act upon urban authorities only, such, for example, as the powers relating to lighting streets under sections 161, 162, *ante*, p. 224, may by this section be conferred on a rural authority.

As to the effect of such an order, see *Lancashire and Yorkshire Railway Company v. Bolton Union*, *ante*, p. 225. An order conferring urban powers under section 150 on a rural authority simply confers on the rural authority the same powers with regard to actual streets as an urban authority would possess. But the description of a road as a street in the order does not make it a street if it is not one in fact. *Fenwick v. Croydon Rural Sanitary Authority* [1891], 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. (N.S.) 645; 40 W. R. 124; 55 J. P. 470; 7 T. L. R. 594.

Power of rural
authority to
form special
drainage
districts.

277. It shall be lawful for a rural authority by resolution(a) to be approved by the Local Government Board,(b) but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district,(c) for the purpose of charging thereon exclusively the expenses of works of sewerage, water supply, or of other works which by this Act are or by order of the Local Government Board may be

declared to be special expenses, and thereupon such area shall become a Section 277. separate contributory place.(d)

(a) Although the statute does not prescribe any previous notice or other preliminaries, no such resolution should be passed by the rural authority without due deliberation and sufficient notice, so that the ratepayers of the district to be affected by it may have an opportunity of being heard by the rural authority before it is passed, and, if necessary, of appealing to the Local Government Board.

A copy of the resolution, when passed, should be forwarded in the same way as other resolutions of the rural authority are transmitted to the Local Government Board.

(b) In this case the Local Government Board are not required to institute an inquiry, but they will, according to their practice, consult their inspector of the district, and if there be any opposition, they will generally order an inquiry.

(c) There is no legal definition of this term. It is, however, explained in section 229, *ante*, p. 308.

(d) See section 229, *ante*, p. 308, which declares the meaning of a contributory place, and sets forth what are *special expenses*.

278. On the application(a) of any urban authority (being a local board or improvement commissioners), the Local Government Board may by order(b) after local inquiry,(c) settle any dispute as to the boundaries of the district of such authority ; such order shall be published(d) in some local newspaper circulating in the district to which it relates, and from and after its commencement(e) shall be conclusive on the question determined by it. Power to settle disputes as to boundaries of districts.

This section is practically superseded by section 57 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, which enables a county council to make orders for the definition of the boundaries of county districts.

(a) This application should be made in writing in the manner described in note (d) to section 270, *ante*, p. 372.

(b) As to this order, see section 295, *post*.

(c) See section 293, *post*. Note that this provision does not apply to the boundaries of boroughs, unless indeed the dispute is between the borough and some other urban authority, and then *quære*.

(d) This publication must be borne by the authorities interested, and at their cost.

(e) See section 275, *ante*, p. 376. This declaration of the conclusiveness of the order is repeated in section 295, *post*.

Union of Districts.

279. Where, on the application(a) of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places(b) in any rural district or districts, to be formed into a united district for all or any of the purposes following ; (that is to say,) Formation of united district.

(1.) The procuring a common supply of water ; or

(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places ; or

(3.) For any other purposes of this Act ;

the Local Government Board may by provisional order(c) form such districts or contributory places into a united district.(d)

Section 279. All costs, charges, and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act.(e)

(a) This should be in writing as described with reference to a petition under section 272, *ante*, p. 373. It should set out the object in view, the necessities or advantages requiring or resulting from the proposal, and such details as the case may require. The application may be joint or several, but the former will be preferable as causing the least labour to all the parties.

(b) As to what are contributory places, see section 229, *ante*, p. 308.

(c) See section 297, *post*, p. 391.

(d) It must be remembered that section 285, *post*, enables two or more authorities to combine of themselves for the execution of works for mutual benefit; and section 28, *ante*, p. 60, provides for agreements in respect of certain joint user of works.

(e) The proportion of these costs must be settled by the respective authorities, as it does not appear that the Local Government Board have any jurisdiction in the matter.

Governing
body of united
district.

280. The governing body of a united district shall be a joint board consisting of such *ex officio* members(a) and of such number of elective members as the Local Government Board may by the provisional order forming the district determine.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any license in mortmain.(b)

(a) The Local Government Board must decide who are to be *ex officio* members, as they are not defined or described by the Act.

(b) This is similar to the provision contained in section 7, *ante*, p. 26.

Contents of
provisional
order forming
united
district.

281. The provisional order forming a united district under this Act shall define the purposes for which such united district is formed, and the powers,(a) rights, duties, capacities, liabilities, and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.(b)

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorised to exercise or perform or is made subject to; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties.(c)

(a) Borrowing powers are granted to the joint board by section 244, *ante*, p. 324.

(b) The board will doubtless adopt, as far as practicable, the provisions of this Act applicable to single authorities.

(c) Care should be taken that the common object of combination is not lost sight of in any delegation of powers or duties under this clause.

**Note to
Section 281.**

282. Meetings of any joint board shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board) (a) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

Meetings and proceedings of joint boards.

(a) The order here referred to is that made in pursuance of the last section.

283. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value (a) of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being. (b)

Expenses of joint boards.

(a) *Rateable value* corresponding with *full net annual value* which is defined in section 4 *ante*, p. 11, under the word *rackrent*.

(b) The valuation list is made pursuant to the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103). See "Lumley's Union Assessment Committee Acts."

A provisional order of the Local Government Board, confirmed by a local Act, provided that the expenses incurred by the joint board for the district should be defrayed out of a common fund, to be contributed by the component districts in manner provided by section 283 of the Public Health Act, 1875, and that the contributions of certain of the component districts should be contributed and raised as if they were required to defray "special expenses" within the meaning of the Public Health Act, 1875:—Held, on a special case, that the joint board should apportion the contributions of the component districts according to the rateable values of the properties in such districts, to be ascertained according to the valuation list, and that the rateable values of tithes, tithe commutation, rentcharges, land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, or covered with water, or used as a canal or towing path, or as a railway, should be taken at the full value appearing in the valuation list, and not at one-fourth thereof. *Darenth Main Valley Sewerage Board v. Dartford Union*, 19 Q. B. D. 270; 57 L. T. 233; 36 W. R. 43.

284. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Payment of contributions to joint board.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly, (a) such contribution in the case of a rural authority being deemed to be general expenses. (b)

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned (c) to raise within the district

Section 284. of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof.(d)

(a) That is, in some civil court of law, namely, in the county court or in the High Court of Justice, according to the amount claimed. See *Richardson v. Willis*, L. R. 8 Ex. 69; 42 L. J. Ex. 15, 68; 27 L. T. (N.S.) 828. There it was said to be a general rule that where a statute gave a right to a sum of money, and provided no means of recovering it, the remedy was by action. But, as this may be a dilatory process, the next paragraph substitutes an alternative mode of proceeding.

(b) As to what are general expenses, see section 229, *ante*, p. 308. And see *Darenth Main Valley Sewerage Board v. Dartford Union*, cited in the notes to the preceding section.

(c) See section 292, *post*.

(d) See section 229, *ante*, p. 308, as to what are contributory places, and section 230 *ante*, p. 310, as to the recovery of amounts due from them.

Power to execute works in adjoining districts, and to combine for execution of works.

285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover, two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

This section does not render necessary the consent of the Local Government Board or any other authority. But if money is required to be borrowed for these works, the Local Government Board must give their consent to the loan, and consequently will require to be satisfied as to the necessity and propriety of the works.

It must be remembered, that as regards the communication of sewers in adjoining districts, section 28, *ante*, p. 60, requires the sanction of the Local Government Board.

This section does not apply to the powers conferred by section 131 so as to require for their exercise in an adjoining district the consent of the local authority of such district. *Withington Local Board v. Manchester (Mayor, &c, of)* [1893], 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. (N.S.) 330; 41 W. R. 306; 57 J. P. 340; 2 R. 367. "The object of section 285 is to enable the local authority acting under it to do certain things as within their powers which, but for the section, would have been outside their powers. They can do certain things in an adjoining district without the imputation of acting *ultra vires* if they have got the consent of the local authority. But, in my opinion, that has not the effect of making the adjoining district or that portion of it their own district for all the purposes of section 16; or, in other words, it does not dispense with the necessity, as between themselves and owners of land or other persons, of observing the requirements that have to be observed with respect to sewers where sewers are made outside the district of the board that is making them." Per NORTH, J., in *Jones v. Conway and Colwyn Bay Joint Water Supply Board* [1893], 2 Ch. 603, at p. 609; and see *ante*, p. 40.

Districts may be united for appointing

286. Where it appears to the Local Government Board, on any representation made to it,(a) that the appointment of a medical officer of

health(*b*) for two or more districts situated wholly or partially in the same county(*c*) would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by order(*d*) unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives)(*e*) which, in the opinion of the said Board, require regulation for the purposes of this section ; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts :

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough) having a separate court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such district or borough.(*f*)

Not less than twenty-eight days' notice that it is proposed to make an order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union, and if within twenty-one days after such notice has been given to any such authority, they(*g*) give notice to the Local Government Board that they object to the proposal, the Local Government Board may include their district in the union by a provisional order,(*h*) but not otherwise.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for the united districts as the said Board may think fit ; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration to be paid by the local authority or authorities of the district or districts, within which his duties under this section are performed as those authorities may,(*i*) with the approval of the Local Government Board, determine.(*k*)

The Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 17, enables a county council to appoint a county medical officer, who may, by arrangement, perform the duties of medical officer of health in any urban or rural sanitary districts within the county. See the section, *post*.

(*o*) This representation should be in writing on foolscap folio paper, addressed to the President under cover to the Secretary, although the text does not prohibit the making of an oral representation.

(*b*) See as to the appointment of this officer, section 189, *ante*, p. 260.

(*c*) It will suffice if a part of one district is in the same county as the others.

(*d*) See section 295, *post*, p. 389.

(*e*) This will include travelling expenses and cost of living. In some cases hotel expenses may be recognised as necessary.

(*f*) The consent of the majority of members assembled at a meeting specially convened for the purpose will doubtless suffice. It is to be observed that this consent is a condition precedent to the constitution of the district. A resolution proposed and carried will be sufficient, and a copy under the hand of the clerk of the authority will be sufficient evidence of it.

**Note to
Section 286.**

No mode is pointed out for ascertaining the population. The report on the last census will in many cases suffice. It is doubtful whether any other course is open in cases where such report will not decide the question.

(g) This applies, not to the urban district previously noticed, but to a rural district, or an urban district not within the description.

(h) As to this order, see section 297, *post*, p. 391. Where this order is attempted to be confirmed by Act of Parliament, it may be opposed by any party legally interested, as shown hereafter.

(i) See section 191, *ante*, p. 263, as to the appointment of a district medical officer to act under this statute.

(k) Seeing that the local authority have a discretion as to what salary they will assign, they should settle this before the assignment of the duties is made by the Local Government Board, as that Board will not assign any duties, nor the officer accept the appointment unless adequate remuneration is to be given.

PORT SANITARY AUTHORITY.

Constitution
of port
sanitary
authority.

287. The Local Government Board may, by provisional order, (a) permanently constitute any local authority (b) whose district or part of whose district forms part of or abuts on any part of a port (c) in England, or the waters of such port, or any conservators, commissioners, or other persons having authority in or over such port or any part thereof (which local authority, conservators, commissioners, or other persons are in this Act referred to as a "riparian authority") the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

The Local Government Board may also by provisional order (a) permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and may prescribe the mode of their joint action; or by forming a joint board, consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district. (d) Moreover, the Local Government Board may, by provisional order, (a) permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

In any case in which the Local Government Board are by this section authorised permanently to constitute by provisional order a port sanitary authority, the said Board may, if it thinks fit, until such order has been made and confirmed by Parliament, (e) temporarily constitute by order any such authority, and may, from time to time, renew any such last-mentioned order, and may by any order so made or renewed, make any such provisions as it is by this section empowered to make by provisional order. (f)

Any order constituting a port sanitary authority may assign to such authority any powers, rights, duties, capacities, liabilities, and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid; (g) and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act. (h)

A port shall mean a port as established for the purposes of the laws Section 287. relating to the customs of the United Kingdom.⁽ⁱ⁾

(a) See section 297, *post*, p. 391. By the Public Health (Ships, &c.) Act, 1885 (48 & 49 Vict. c. 35), s. 3, *post*, in any case in which the Local Government Board are by the principal Act (as set out in the text) authorised permanently to constitute a port sanitary authority by *provisional order*, they may permanently constitute a port sanitary authority by *order*. Every such order shall specify a day on which it shall come into operation in the event of its not becoming a provisional order as thereafter provided, and at least four weeks before such day a copy of it shall be sent by the Local Government Board to every riparian authority, which is by the order or otherwise required to contribute to the expenses of the port sanitary authority, and if before such day notice in writing shall be received by the Local Government Board from any such riparian authority objecting to the order, and such notice is not withdrawn before such day, the order shall be deemed to be a provisional order duly made by the Local Government Board under the principal Act, and in the event of its being confirmed by Parliament, shall come into operation on such day as may be provided in that behalf in the Act confirming it. Any order made under the section may, if the same has not become a provisional order, be repealed, altered, or amended by any subsequent order made by the Local Government Board.

(b) Note the general character of this term which is defined in section 4, *ante*, p. 6.

(c) See the definition of this term at the end of this section.

(d) See how this is to be done, in section 279, *ante*, p. 379.

(e) As to the conclusiveness of this temporary order while it is in force, see section 295, *post*, p. 389.

(f) These words, providing for the renewal of the order, did not exist in 35 & 36 Vict. c. 79, s. 20. Some doubt existed as to whether the board possessed the power of renewal under that Act, and accordingly section 325 of this Act, *post* (now repealed), was passed to ratify and confirm their renewed orders.

(g) The orders issued by the Board do contain some of these provisions, and where they do so the powers and duties of the local authorities in the places referred to are *pro tanto* superseded. By way of illustration reference may be made to the provisional order permanently constituting a port sanitary authority for the port of Plymouth. It will be found in "Glen's Local Government Orders," at p. 258. It provides for the number and qualification of the members of the port sanitary authority, for their continuance in office, casual vacancies, meetings, powers of the authority, expenses, accounts, audit, and the settlement by arbitration of any disputes between the joint board and any riparian authority, or between any two or more riparian authorities respecting any matter arising out of the provisions of the order. See also the general order for the accounts of such authorities, "Glen's Local Government Orders," p. 268.

Powers of borrowing are given to port sanitary authorities by section 244, *ante*, p. 324.

(h) See section 279, *ante*, p. 379.

(i) See the Customs Laws Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 11—16. These sections provide that the Commissioners of the Treasury may, by their warrant, appoint any port in the United Kingdom, and declare the limits thereof, and may annul the limits of any port already appointed or to be thereafter set out, and may declare the same to be no longer a port: Provided that such alterations or variations in limits shall not affect any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her Majesty's Customs) granted to any person or body by any Act of Parliament, &c., but they shall be deemed to be and remain the same for the purposes of such Act as if no such alteration or variation had been made. The Commissioners of the Treasury may, from time to time, revoke or alter any warrant made by them.

288. The order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or

Jurisdiction of port sanitary authority.

Section 288. such portions of the district within the jurisdiction of any riparian authority as may be specified in the order.

As to what is a *riparian authority*, see the last section.

Delegation of powers by port sanitary authority.

289. A port sanitary authority may, with the sanction of the Local Government Board, *(a)* delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the order of the Local Government Board, but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the order of the Local Government Board within the district of such port sanitary authority. *(b)*

(a) Applications should be made in writing in the manner described in the several notes above referring to application by local authorities.

(b) This is merely an emphatic reiteration of what has been provided in the previous sections.

Expenses of port sanitary authority.

290. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just. *(a)*

Such port sanitary authority, if itself a local authority under this Act independently of its character as a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act. *(b)*

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct.

Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly, *(c)* such contribution in the case of a rural authority being deemed general expenses of that authority. *(d)* If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned *(e)* to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several riparian authorities are combined in the district of one port sanitary authority the Local Government Board may by order *(f)*

declare that some one or more of such authorities shall be exempt from Section 290. contributing to the expenses incurred by such authorities.

(a) The provisional order issued to the port of Liverpool, confirmed by 37 & 38 Vict. c. clii., shows how the board have adjusted the proportions in a case of much complexity.

(b) As to these expenses in an urban district, see section 207, *ante*, p. 276. In a rural district they will probably divide themselves into general and special, and reference must, therefore, be made to section 229, *ante*, p. 308.

(c) That is by action. See note (a) to section 284, *ante*, p. 381.

(d) See section 229, *ante*, p. 308.

(e) See section 292, *infra*.

(f) See as to this order, section 295, *post*, p. 389.

291. *The mayor, aldermen, and commons of the City of London shall be the port sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.*

Provision as to port of London
[Repealed by 54 & 55 Vict. c. 76.]

This section has been repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and re-enacted by section 111 of that Act. See also section 112.

292. Where any port sanitary authority, joint board, or other authority are authorised, in pursuance of this Act, to proceed in a summary manner (a) to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority. (b)

Proceedings for raising a sum for payment of debt within district of a defaulting authority.

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers, (c) the authority so authorised as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority; (d) and where the defaulting authority (e) have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities. (d)

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority. (b)

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs, charges and expenses (including compensation to any persons they may employ) to be incurred by

Section 292. such authority by reason of the default of the defaulting authority ; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs, charges, and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

(a) See section 284, *ante*, p. 381, and section 290, *ante*, p. 386.

(b) Refer for these powers to Part VI., *ante*, p. 276.

(c) This, in the case of an urban sanitary authority in default, applies where a borough rate, improvement rate, or district rate can be levied. A rural sanitary authority cannot levy a rate other than a rate under section 230, *ante*, p. 310.

(d) See Part VI. and section 256, *ante*, p. 339.

(e) This applies to the case of a rural sanitary authority, so that where the rural district council comprised in a joint district make default, the joint board may issue their precepts to the overseers of the parishes in the district.

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

293. The Local Government Board may from time to time cause **Section 293.**
to be made such inquiries as are directed by this Act, and such inquiries Power of
as they see fit in relation to any matters concerning the public health in Board to
any place, or any matters with respect to which their sanction, approval, direct
or consent is required by this Act. inquiries.

These powers in relation to the public health were assigned to the Privy Council by 21 & 22 Vict. c. 97, s. 3, and transferred to the Local Government Board by 34 & 35 Vict. c. 70. This passage, therefore, only repeats the provisions already existing. It will be seen that certain inquiries are directed by the Act; as to these the Board have no discretion. See sections 33, 53, 176, 234, 272—274, and 278, *ante*, and section 297, *post*. They have, however, a discretion as to other inquiries for the purposes of the Act. It is provided by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 85, *post*, that for the purposes of the execution of their duties under that Act, the Local Government Board may hold such local inquiries as the Board see fit, and sections 293 to 296, both inclusive, of the Public Health Act, 1875, relating to inquiries by such Board, shall apply. See also section 87 of the Local Government Act, 1888, *post*.

294. The Local Government Board may make orders(*a*) as to the Orders as to
costs of inquiries or proceedings instituted by, or of appeals to, the said costs of
Board under this Act, and as to the parties by whom or the rates out of inquiries.
which such costs shall be borne; and every such order may be made a
rule of one of the superior courts(*b*) of law on the application of any
person named therein.

(*a*) As to the Board's orders, see next section. The Board interpret this section as applying to costs which they incur in these inquiries and act accordingly. 11 & 12 Vict. c. 68, s. 11, and 21 & 22 Vict. c. 98, s. 23, contained provisions for the reimbursement of the Treasury for the costs of inquiries under those Acts, but these provisions are not renewed.

(*b*) That is, a division of the High Court of Justice.

1 & 2 Vict. c. 110, contained provisions for enforcing payment of costs upon rules of court, and these will be available against individuals; but with regard to costs awarded against the local authority, the effectual remedy will be by *mandamus*.

295. All orders made by the Local Government Board in pursuance Orders of
of this Act(*a*) shall be binding and conclusive in respect of the matters to Board under
which they refer,(*b*) and shall be published in such manner as that Board this Act.
may direct.(*c*)

(*a*) Questions of some difficulty may arise as to the effect of orders which are alleged to exceed the powers given by this Act, or with respect to which the preliminaries prescribed by this Act have not been strictly complied with. The confirmatory Acts formerly only confirmed the orders so far as they were authorised by the Acts. In such cases it becomes important to determine how far the requisite preliminaries are conditions precedent to the validity of the order although confirmed by statute. The following cases will illustrate these remarks. The General Board of Health made a

**Note to
Section 295.**

provisional order extending the Public Health Act, 1848, to T., a district within which were parts of the turnpike roads, made under local turnpike Acts. A local Sanitary Act also applied to the district, which was altered by this order, and it was directed that after confirmation of the order by Parliament, section 50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the Sanitary Act. This provisional order was confirmed by the statute *so far as authorised by the above Act*. It was held that this part of the provisional order was not authorised, and consequently was void. The court considered that toll on the turnpike road was not a matter which came within the scope of the Public Health Act. *Clayton v. Fenwick*, 6 E. & B. 114; 25 L. J. Q. B. 226; 20 Jur. 635; 20 J.P. 180. An order of the General Board of Health rendering the same Act applicable to the borough of T., but excepting the operation of so much of section 88 as provided for the rating of pasture lands, railways, &c., at a reduced rate, was held to be invalid in respect of this exception. *North Eastern Railway Company v. Teignmouth (Mayor, &c., of)*, L. R. 3 Q. B. 723; 37 L. J. M. C. 183; 9 B. & S. 616; 32 J. P. 822. In *Frewen v. Hastings Local Board*, 16 L. T. (N. S.) 553; 6 B. & S. 401; 29 J. P. 711; it was held that a provisional order could not be removed by *certiorari* to be quashed. This was followed in a recent Irish case. *In re Local Government Board, Ex parte Kingston Commissioners*, 18 L. R. Ir. 509. See a note of this case in the notes to section 297, *post*. But where an order, confirmed by statute, repealed a local Act which created a district rate, but exempted certain property from such rate, and the clause containing the exemption was preserved by such order, the court held that the order had no operation with regard to rates imposed by the Public Health Act, for the rating clause of the Act having been repealed, there was nothing to which the exception could apply. *Turner v. Halifax (Mayor of)*, 9 B. & S. 623*n*.

In *Reg v. Robinson*, 17 Q. B. 466, it was held that an order of the Poor Law Commissioners (whose powers are now transferred to the Local Government Board) might be quashed in part on *certiorari* if the parts were sufficiently divisible. But see section 262, *ante*, p. 350.

As to the force and effect of departmental orders which affect the rights of property, see *Frewin v. Lewis*, 9 Sim. 66; 4 My. & C. 249; *Foster v. Dodd*, 7 B. & S. 140; 8 B. & S. 842; 32 J. P. 20. In *Attorney-General v. Manchester (Bishop of)*, L. R. 3 Eq. 455; 15 L. T. 646; 15 W. C. 673; 31 J. P. 516; STUART, V.C., quotes the following passage from the judgment of COTTENHAM, L.C., in *Frewin v. Lewis (supra)*, as laying down the rule of law: "I apprehend that the limits within which the court interferes with the acts of public functionaries constituted like the Poor Law Commissioners are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by the law, this court will not interfere to see whether any alteration or regulation which they may direct is good or bad; but if they are departing from that power which the law has vested in them,—if they are assuming to themselves a power over property which the law does not give them,—this court no longer considers them as acting under the authority of their commission, but treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority."

(b) Besides other modes of enforcing such orders, they may be enforced under certain circumstances by *mandamus*, and perhaps by indictment. See *Reg. v. Walker*, L. R. 10 Q. B. 355; 44 L. J. M. C. 167; 33 L. T. (N.S.) 167; 40 J. P. 230.

With regard to defaulting authorities, see section 299, *post*.

(c) See section 135, *ante*, p. 152, and *Reg. v. Love*, cited in the note to that section.

Power of in-
spectors of
Local Govern-
ment Board.

296. Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the Board, (a) have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts. (b)

(a) Note the limitation to inquiries directed by the Board.

(b) 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors. Under these sections an inspector may summon any person to be examined before him, or to produce and verify on

oath any books, contracts, agreements, accounts, or copies of the same, and not relating to or involving any question of title to lands (except the property of the local authority). He may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering or concealing any books, &c., are misdemeanors and evidence falsely given before the inspector is perjury.

Note to
Section 296.

Provisional Orders by Board.(a)

297. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :—

As to provisional orders made by Local Government Board.

- (1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates : *(b)*
- (2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, *(c)* shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections : *(d)*
- (3.) The Local Government Board may *(e)* submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament : *(f)*
- (4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills : *(g)*
- (5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts *(h)* or of this Act, and any Order in Council *(i)* made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament :
- (6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament :
- (7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with : *(k)*

Section 297. (8) Every act confirming any such provisional order shall be deemed to be a public general Act.(l)

(a) See the notes to section 295, *ante*, p. 389.

In the case of *Morley, In re*, L. R. 20 Eq. 17 ; 32 L. T. (N.S.) 524 ; 23 W. R. 532, the Master of the Rolls, referring to a provisional order made by the Board of Trade, observed :—"The legislature, instead of allowing proceedings to be taken before a committee of either House, decided that these inquiries" (*i.e.*, preliminary to the making of the order) "might be prosecuted more cheaply and more beneficially before a local tribunal or persons appointed to inquire into the matters locally. These proceedings are instituted, and the parties interested, instead of applying to Parliament, apply to the Board of Trade, and after making a proper investigation in the locality, the Board of Trade makes a provisional order, and then if Parliament thinks fit, that provisional order, generally with a great many more, is confirmed by an Act which is not procured at all by the applicants, but by the Board of Trade ; that is, by the executive government of the country. The result is that there has been an entire change of system, and all that the applicant obtains is the provisional order, and there is no proceeding in Parliament with which he really has anything to do *directly*." Note the limitation of these last words.

The Board have issued a circular letter and instructions relating to applications for provisional orders by local authorities. These should be carefully attended to. The circular and instructions will be found set out in the Appendix, *post*.

(b) It is the practice of the Board to frame the advertisement and provide for its publication, and though they pay the charge in the first place, they include it in the order for expenses. Reference should be made to section 176, *ante*, p. 246, as to the advertisements, &c., necessary before applying for a provisional order to authorise the compulsory purchase of land.

(c) In some cases the Act itself requires an inquiry. In others the Board themselves deem it advisable for the purpose of guiding their own actions. It seems that under section 176, sub-section (4), *ante*, p. 246, the inquiry may in some instances be dispensed with.

(d) It is obvious that persons may also attend and be heard in support of the proposal.

The Board frame the order themselves, though they do not decline to accept, as aids, clauses drawn up and submitted by them to the parties. Such drafts should be on folio foolscap paper.

(e) The Board can exercise their discretion as to submitting the order to Parliament at all, and, consequently, as to when they will do so. They generally group several orders together in one Bill in such a manner as to prevent, as far as practicable, unopposed orders from being delayed by the companionship of such as may be contested. They can choose in which House to bring in the Bill, and accordingly at the latter part of the session they frequently introduce it in the House of Lords.

(f) Therefore the order cannot be quashed on *certiorari*. *Reg. v. Hastings Local Board*, 6 B. & S. 401 ; 34 L. J. Q. B. 159 ; in *Re Local Government Board, Ex parte Kingstown Commissioners*, 18 L. R. Ir. 509. In the latter case it was held that the Local Government Board in exercising its functions as to provisional orders is not a court, nor are purely legislative powers, or powers of promoting legislation, on principle, subject to prohibition ; but an usurpation of jurisdiction of a judicial character might be prohibited. But the Chancery Division by injunction will restrain a local board from prosecuting an application for a provisional order when the application is contrary to equity, and will not drive the applicant to petition Parliament against the Bill. *Telford v. Metropolitan Board of Works*, L. R. 13 Eq. 574 ; 41 L. J. Ch. 589 ; 26 L. T. (N.S.) 150 ; 20 W. R. 481 ; 36 J. P. 628.

(g) As most provisional orders are made for the benefit of some particular locality and are not framed by the Local Government Board spontaneously, if opposition be made to the order, its defence before the committee is left to the promoters of the proposition contained in the order, notwithstanding the observations of the Master of the Rolls, *supra* ; at the same time, the Board reserve a power of withdrawing any order from the Bill, if this seems to them to be expedient pending its passage through Parliament.

It is right to notice that 33 & 34 Vict. c. 1, gave power to the Select Committee of either House of Parliament, to whom bills confirming provisional orders are referred,

to award costs under 28 Vict. c. 28, and to examine witnesses on oath as under 22 Vict. c. 78. It was repealed by 34 & 35 Vict. c. 3, but re-enacted with a slight addition not affecting these orders. That statute is still in force as to costs, but has been repealed as to the power to examine witnesses upon oath by 34 & 35 Vict. c. 83, which gives a general power to any committee to examine witnesses on oath.

The next section provides for the costs of the promoters.

(h) See the definition in section 4, *ante*, p. 21.

(i) The orders in council were made under 11 & 12 Vict. c. 63, but *quære* whether any were made under any other Act. See further as to such orders, section 339, *post*. As to the exercise of the powers conferred by this sub-section, see *In re Local Government Board*, *supra*.

(k) This is a new provision which has rendered it incumbent on the Board to inquire strictly into the proceedings taken under the statute to see that all have been correctly taken. Thus they must be satisfied that all the advertisements have been published in the appointed manner, and that all the notices have been duly served.

They require statutory declarations on these points from proper deponents.

It is, however, open to any petitioner to show before the committee that there has been some default in this respect. Whether advantage can be taken of any such defect after the passing of this Act is yet to be decided.

(l) Hence it is the practice of the Board to insert in the body of the Bill clauses which alter the general law in respect of the district to which any provisional order relates, where the order renders some alteration necessary, or some special privilege, exemption, or requirement expedient. But such provision must arise out of the order or be connected with it. The Local Government Board will not propose extraneous alterations of the law in a confirming Bill.

It may be noticed that though these are public general Acts, by a recent arrangement they are printed with the local Acts in the authorised edition of the statutes.

298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, (a) as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly (b) and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs. (c)

Costs of
provisional
orders.

(a) With reference to the costs of the preliminary inquiries previous to the issuing of the provisional order, it is right to refer to the observations of the Master of the Rolls in *In re Morley*, *ante*, p. 392, upon the bill of costs of the solicitor engaged by a local authority. He said:—"These are not parliamentary costs, they are simply costs of obtaining an order from the Board of Trade, and they must be taxed under the ordinary rules applicable to costs. There is a reason for this. In former days, when application had to be made to Parliament, great expenses were incurred in consequence of the necessity of employing parliamentary agents and so on; but on these local inquiries there is no necessity for anything of the kind; you may employ an ordinary solicitor, and the notices may be served in the ordinary way, and no great expenditure is incurred." By the House of Commons Costs Taxation Act, 1879 (42 & 43 Vict. c. 17), all the powers and provisions of the House of Commons Costs Taxation Act, 1847 (10 & 11 Vict. c. 69), are extended and applied to the costs, charges, and expenses of any parliamentary agent, solicitor, or other person in respect to the obtaining or promotion of or opposition to any provisional order or provisional certificate or any bill for confirming the same; and in respect to the promotion of any bill by any public trustees or commissioners, or by any municipal or other public authority, and in respect to the opposition to any public and general bill.

(b) Hence it will not be necessary for the local authority to obtain in this case the sanction required by 35 & 36 Vict. c. 91, printed in the Appendix.

(c) The local authority may obtain this loan from the Public Works Loan Commissioners under section 242, *ante*, p. 323, but it is not probable that the

Note to Section 298. Local Government Board would recommend the loan at the low rate of interest under section 243, *ante*, p. 323.

The section is also an exception to the provisions as to loans contained in section 234, *ante*, p. 316 ; consequently, there is no limit of time for repayment, unless the Local Government Board can prescribe it when they sanction the loan.

*Power of Board to enforce Performance of Duty by defaulting
Local Authority.*

Proceedings
on complaint
to Board of
default of
local autho-
rity.

299. Where complaint(*a*) is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, (*b*) and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, (*c*) the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order(*d*) limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of *mandamus*, (*e*) or the Local Government Board may appoint some person to perform such duty, and shall by order(*d*) direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default ; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench, (*f*) and be enforced in the same manner as if the same were an order of such Court. (*g*)

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) (*h*) the powers of levying rates ; and the Local Government Board may from time to time by order change any person so appointed.

(*a*) This complaint may come from any person. It should be in writing, upon folio foolscap paper, addressed to the President of the Board under cover addressed to the Secretary, and should state, with as much conciseness as practicable, the facts of the case which show the default of the authority, and should offer proof of the complaint.

(*b*) See the provisions of the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), s. 3, *post*.

(*c*) The complaints are specifically as to the want of a sewer and as to deficiency of water supply. But there is a general charge of default in respect of *any* provision of the Act, and this lets in a wide range of complaints. The Board, upon receipt of the complaint, generally communicate it to the local authority, so as, if possible, to avoid an inquiry and any further action. If no redress is thus obtained, and they deem the matter of sufficient importance to require further proceedings, they cause inquiry to be made by one of their inspectors as explained in sections 293, 296, *ante*, pp. 389, 390.

(*d*) This order is in itself binding and conclusive. See section 295, *ante*, p. 389. It must be directed to and served upon the defaulting authority. But the obtaining

Note to
Section 299.

of such an order does not prevent the person, who has obtained it for the purpose of putting an end to a nuisance, from proceeding by action for an injunction to restrain the continuance of such nuisance. *Whitefield v. Newquay Local Board*, "Law Times," 18th March, 1882, p. 349.

If the Board refuse to make an order, that fact may be considered by the Court sufficient to justify their refusing a *mandamus* if the complainant applies directly for the writ. *Reg. v. Tottenham Local Board*, 9 T. L. R. 414; 15 M. C. C. 225.

(e) Accordingly upon one occasion the Board proceeded in the Queen's Bench Division of the High Court of Justice for a writ of *mandamus* against the corporation of Lincoln, for neglecting to provide proper sewers for their city, and obtained the writ notwithstanding the alternative remedy given by the section. Another such case, that of the Cheshunt Local Board, is referred to in the report of the Local Government Board for 1883—84, p. xciii.; and see *Reg. v. Rochester (Mayor, &c., of)*, "Times," 22nd November, 1892. Upon an application for a writ of *mandamus*, the Court will not enquire whether there has been a due inquiry under this section. The Court is bound to grant the writ at the request of the Board, unless there has been some legal error or some omission to apply the ordinary legal procedure. *Reg. v. Staines Union and Staines Local Board*, 10 R. 292; 62 L. J. Q. B. 540; 69 L. T. (N.S.) 714; 58 J. P. 182. The writ against the Staines Local Board was afterwards made peremptory, notwithstanding a return that the local board required time to prepare a scheme and estimate for obtaining the necessary funds. *Reg. v. Staines Local Board*, "Times," 27th February, 1894.

(f) Now the Queen's Bench Division of the High Court of Justice.

(g) Under the corresponding enactment in 29 & 30 Vict. c. 90, s. 49, an order was made that "the said authority do its duty, and begin to set about the works for the purpose within one month from the date of this order, and proceed therewith until completion." After the month, the authority having done nothing, a second order was made appointing J. B. to perform the said duty of the authority as he should be directed. It was held that the two orders were justified by the section. *Reg. v. Cockerell*, L. R. 6 Q. B. 252; 40 L. J. M. C. 153; 19 W. R. 1133; 34 J. P. 693. It was also held that it was not necessary to provide for the expenses in the latter order.

As to the enforcing of the order, see 1 & 2 Vict. c. 110, s. 18, and the Rules of the Supreme Court, Order 42, rule 31, which enables an order against a corporation to be enforced by sequestration or attachment. See also the next section.

(h) See the next section.

300. Any sum specified in an order(a) of the Local Government Board for payment of the expenses(b) of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority,(c) and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority,(d) which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses(e) to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by order(f) empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board,(g) be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt.

Further pro-
vision for
recovery of
expenses.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority;(h) and the said person or persons, after repaying all

Section 300. sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the defaulting authority.

(a) As to this order, see the last section. See also section 295, *ante*, p. 389, which makes it binding and conclusive.

(b) As to the meaning of this word, see section 302, *post*.

(c) It is not stated to whom the debt is due, but apparently it will be due to the person executing the works.

(d) This rate will be the district rate in the case of an urban sanitary authority, but it is somewhat difficult to say what rate is referred to in the case of a rural sanitary authority.

(e) Neglect after demand will doubtless be considered to be a refusal. See *Gully v. Smith*, 12 Q. B. D. 121 ; 53 L. J. M. C. 35 ; 48 J. P. 309.

(f) See section 295, *ante*, p. 389.

(g) The Board have an absolute discretion in the matter.

(h) See Part VI. of this Act, *ante*, p. 276. The term *local rate* does not properly apply to any rate levied under this Act by that name, but it is explained in the earlier part of the section.

Power of Board to borrow to defray expenses of performing duty of defaulting authority.

301. The Local Government Board may from time to time certify the amount of expenses (a) that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority ; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred ; (b) and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security ; (c) and the Local Government Board, or the person so appointed may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

(a) See the explanation of this word in the next section.

(b) A question arises whether the loan thus to be raised will be affected by the provisions in section 234, *ante*, p. 316. Some difficulties may occur if this be the result.

(c) But they cannot advance at the low rate of interest. See section 243 (2), *ante*, p. 324. As this is a loan which is not premeditated, it can seldom be provided for and notified in the manner required by the Public Works Loans Act (38 & 39 Vict. c. 89), noticed in the notes to section 242, and set out in the Appendix.

Recovery of principal and interest.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and,

in addition to any other remedies, may be recovered in the manner in **Section 302.** which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.^(a)

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

“Expenses,” for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

(a) See the last section.

Powers of Board in relation to Local Acts, &c.

303. The Local Government Board may, on the application of the local authority of any district,^(a) by provisional order,^(b) wholly or partially repeal, alter,^(c) or amend any local Act, other than an Act for the conservancy of rivers,^(d) which is in force in any area comprising the whole or part of any such district,^(e) and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act. Power to repeal and alter local Acts.

Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority^(f) shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district.

(a) The application comes from the local authority, and not from the commissioners or parties acting under the local Act. No particular formality is required in this application, but the proposal and the object of it should be clearly set forth in writing upon folio foolscap paper. The Board recognize an application signed by an official, such as the town clerk of a borough, or the clerk of the district council.

Remarks upon this section will be found in the judgment of LINDLEY, J., in *Monmouth (Mayor, &c, of) v. Monmouth (Churchwardens of)*, 38 L. T. (N.S.) 612. Referring to this section he said, “Nothing can be clearer than that the legislature did not intend by the Public Health Act to interfere with the local Acts. It did give power to the Local Government Board to deal with them by provisional orders; but that was only where they did not confer powers or privileges on any persons or person for their or his pecuniary benefit” (p. 618). Reference may also be made to *Walsall (Overseers of) v. London and North Western Railway*, cited in the notes to section 207, *ante*, p. 277, and to *North Eastern Railway Company v. Tyne-mouth (Mayor, &c., of)*, L. R. 3 Q. B. 723; 37 L. J. M. C. 183; 9 B. & S. 616; 32 J. P. 822.

(b) See section 297, *ante*, p. 391.

(c) The law officers of the Crown advised that the corresponding provision in 35 & 36 Vict. c. 79, s. 33, enabled a local Act to be altered in provisions not within the purview of the Sanitary Acts, if it were brought within the operation of the

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Section 303.**

section at all. Several provisional orders have been framed accordingly, and have been confirmed by Parliament. But there is no general power conferred upon the board to alter any local Act which relates to local matters.

(d) This appears to signify an Act exclusively provided for the conservancy of a river, so that when the Act provides for the conservancy of a river, and also for other matters, subjects of this Act, application may be made with reference to the latter matters.

(e) By these words the provision in previous Acts has been extended. That was confined to a local Act in force in a district co-extensive with the sanitary district. But now a local Act will be brought within the operation of this section, though it applies to a much larger or a much less area than that of the sanitary district.

(f) So that if there be more than one local authority having jurisdiction on the boundaries of the included or excluded area, the Local Government Board may determine which shall have jurisdiction in the area dealt with.

Settlement of
differences
arising out of
transfer of
powers or
property to
local
authority.

304. On the application(a) of any authority from whom or to whom any powers, rights, duties, capacities, liabilities, obligations, and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act or any provisional order made thereunder, or on the application of any person(b) affected by such transfer, the Local Government Board may by order(c) settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers, rights, duties, capacities, liabilities, obligations, or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament.(d)

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same.(e)

See the similar provision in the Local Government Act, 1888, s. 62, *post*, as to adjustment of property and liabilities between authorities affected by orders under that Act.

(a) This should be made in writing, and in the manner already frequently described in these notes.

(b) The Board have declined to entertain questions of disputed liabilities or disputed accounts between local authorities and contractors and such persons. They have considered that such disputes and questions should be settled in a court of law. It is to be observed that this section does not constitute the Board the sole tribunal for any of the disputes to which the section refers. In this respect it differs from the local Act with reference to which the decision was given in *Bexley Local Board v. West Kent Sewerage Board*, 9 Q. B. D. 518; 51 L. J. Q. B. 456; 47 L. T. (N.S.) 192; 31 W. R. 119; 46 J. P. 519. In that case the West Kent Sewerage Board was incorporated by a local Act, 38 & 39 Vict. c. clxiii., of which section 93 enacted that if any difference should arise between the board on the one hand and any constituted authority on the other hand, or between any two or more constituted authorities, or between any constituted authority and any parish or person, respecting any assessment of a main sewer rate, or any determination of the board, or any controversy or other matter under the Act, the same should by virtue of the Act stand referred for decision to the Local Government Board, whose decision thereon and with reference to the cost of the reference was to be final and binding. A dispute having arisen

between the West Kent Sewerage Board and the Bexley Local Board respecting a claim made by the local board against the sewerage board for compensation for damage done to the highways, &c., of the district, the disputants, with the consent of the Local Government Board, stated a case for the opinion of the Queen's Bench Division. But it was held that it was not competent for them to do so, the Local Government Board being by section 93 constituted the tribunal, whose decision on the matter was to be final and binding, and the statement of the case not being a submission to arbitration within the meaning of section 5 of the Common Law Procedure Act, 1854, which applies only to compulsory references under the Act, or to references by consent of parties where the submission is or may be made a rule of court.

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Section 304.

(c) See as to this order, section 295, *ante*, p. 389.

(d) See section 297, *ante*, p. 391, and section 323, *post*, for other orders of adjustment.

(e) That is, for example, in an order constituting a local government district out of a rural district, or in an order altering a local Act.

PART X.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

MISCELLANEOUS.

Section 305.

Entry on
lands for
purposes of
Act.

305. Whenever it becomes necessary for a local authority or any of their officers to enter, examine, or lay open any lands or premises for the purpose^(a) of making plans, surveying, measuring, taking levels, making, keeping in repair, or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries,^(b) and the owner or occupier of such lands or premises refuses to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the local authority may, after written notice^(c) to such owner or occupier, apply to a court of summary jurisdiction^(d) for an order authorizing the local authority to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them.^(e)

If no sufficient cause is shown against the application, the court may make an order accordingly,^(f) and on such order being made the local authority or any of their officers^(g) may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency,^(h) no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

(a) Care must be taken not to claim an entrance for any purpose not specified here. An entrance for the purpose of examining drains and privies, as to nuisances, and as to unsound meat, &c., can be obtained under sections 41, 102, and 119, *ante*. See also the power of entry given by section 84 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), which may be incorporated herewith by provisional order; and the provision in the next section for the admission of the owner by the occupier to execute works. See also note (e), *infra*. In *Wheatcroft v. Matlock Local Board*, 52 L. T. (N.S.) 356, DENMAN, J., thought that this section would not apply where a landowner had refused permission to a local authority to enter his land for the purpose of covering in or otherwise improving a sewer under sections 18 and 19, *ante*, pp. 49, 50.

(b) It does not appear that the local authority have any power to fix boundaries, but the power to enter to ascertain boundaries may perhaps be exercised for the purposes of section 272, *ante*, p. 373.

(c) As to the authentication and service of this notice, see sections 266, 267, *ante*, pp. 358, 359.

(d) See the definition in section 4, *ante*, p. 22. Previous to the making of the order the party must be summoned to appear before the justices, though the form F. in Schedule IV. does not recite any summons. As to the removal of such an order by *certiorari*, see section 262, *ante*, p. 350, and the notes to that section. It is doubtful whether the order would be any protection to persons attempting to act under it if the provisions of this section be not duly complied with.

(e) This section does not enable a local authority to obtain an order in the case of an owner's refusal to permit an entry for the purpose of proceedings taken under

section 16, *ante*, p. 38, to lay a sewer through private lands. *Lamacraft v. St. Thomas Rural Sanitary Authority*, 42 L. T. (N.S.) 365; 44 J. P. 441; and see *Wheatcroft v. Matlock Local Board*, *supra*. Note to Section 305.

(f) Justices have no power to state a case in refusing to make such an order. There is no determination of a complaint within 20 & 21 Vict. c. 43, s. 2, the power of the justices to make the order being discretionary. *Diss Urban Sanitary Authority v. Aldrich*, 2 Q. B. D. 179; 46 L. J. M. C. 183; 36 L. T. (N.S.) 663; 41 J. P. 549. But if they made the order, and any question were raised as to its being in excess of jurisdiction, it would seem that a case might be stated under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33.

(g) The officer should be provided with some authority from the board and his means of proving it.

(h) The person who enters must determine at his peril whether the case be one of emergency. Therefore, it will be the safest course to give this notice, unless the emergency be very clear.

306. Any person who wilfully obstructs any member of the local authority, or any person duly employed in the execution of this Act, or who destroys, pulls down, injures or defaces any board(*a*) on which any bye-law notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board(*b*) or of the local authority, be liable for every such offence to a penalty not exceeding five pounds.(*c*) Penalty on obstructing execution of Act.

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing,(*d*) require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making(*e*) of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.(*f*)

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall, unless he shows cause to the satisfaction of the court for his refusal, be liable to a penalty not exceeding five pounds.(*f*)

(a) See the next section.

(b) Notices as to inquiries are here referred to which the Local Government Board direct to be put up.

(c) As to the recovery of this penalty, see section 251, *ante*, p. 333. It is to be observed that the definition of a court of summary jurisdiction (*ante*, p. 22) differs from that in the Act of 1848 (11 & 12 Vict. c. 63), s. 2. It is not necessary, therefore, that the justices should be acting for the petty sessional division in which the matter of complaint arises. See *Reg. v. Brodhurst*, 27 J. P. 580.

The defendant is not necessarily entitled to have the case dismissed because the obstruction took place in assertion of a claim of right. Nor are justices for that reason alone justified in refusing as frivolous an application for a special case. *Reg. v. Pollard*, 14 L. T. (N.S.) 599. When the Public Health Act, 1890 (53 & 54 Vict. c. 59), has been adopted in any district the provisions of the above section are extended to persons who destroy, pull down, injure or deface any advertisement, placard, bill, or notice, put up by, or under the direction of, a local authority. See section 48 of the Act, *post*.

(d) See the Form E. in Schedule IV., *post*, which recites the issue of a summons to the party complained of, and his failure to show sufficient cause against the order.

(e) In 18 & 19 Vict. c. 121, s. 37, the word *service* was substituted for the word *making* in 11 & 12 Vict. c. 63, s. 16. It is, perhaps, to be regretted that there has

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Section 306.**

been this change. The order may be made in the absence of the occupier or without his knowledge, and the time may run from an act of which he knows nothing, whereas he could not have pleaded ignorance of the service.

(f) See as to the recovery of this penalty, section 251, *ante*, p. 333.

Penalty on
damaging
works, &c.,
of local
authority.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act, (a) be liable to a penalty not exceeding five pounds. (b)

(a) See section 60, *ante*, p. 86, and the last section. It is presumed that the offender may also be punished under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 51, 52. The difference between the language of these sections and that of the text should be noticed. The words of 24 & 25 Vict. c. 97, s. 51, are "unlawfully and maliciously;" the words of section 52 are, "wilfully or maliciously." In the text the language is simply "wilfully." The distinction may be important if the defendant charged under this section sets up a claim of right. In *White v. Feast*, L. R. 7 Q. B. 353, BLACKBURN, J., said: "It is obvious that very many injuries may be done to property wilfully, without being malicious, by persons so poor that a civil action would be no remedy, so that it might well be desirable to protect property, and yet not desirable that the person, though poor, should be ousted of his civil rights if the act were done under a fair and reasonable supposition of right." S. C. 41 L. J. M. C. 81; 26 L. T. (N.S.) 611; 20 W. R. 382; 36 J. P. 436. And see *Watkins v. Major*, L. R. 10 C. P. 662; 44 L. J. M. C. 164; 33 L. T. (N.S.) 352; 24 W. R. 164; 39 J. P. 808.

(b) See, as to the recovery of this penalty, section 251, *ante*, p. 333.

Compensation
in case of
damage by
local autho-
rity.

308. Where any person sustains any damage (a) by reason of the exercise of any of the powers of this Act, (b) in relation to any matter as to which he is not himself in default, (c) full compensation shall be made to such person by the local authority exercising such powers (d); and any dispute as to the fact of damage or amount of compensation (e) shall be settled by arbitration in manner provided by this Act, (f) or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party, (g) be ascertained by and recovered before a court of summary jurisdiction. (h)

(a) In *Herring v. Metropolitan Board of Works*, *infra*, a point was raised as to the kind of damage which could be recovered under the corresponding section of the Metropolis Management Act. It was not necessary to decide the case on this point, but SMITH, J., expressed an opinion that the section was confined to something like actual damage to land. It has since been held that the principle of the decision in *Ricket v. Metropolitan Railway Company*, *infra*, is that in order to entitle a claimant to compensation under section 68 of the Lands Clauses Consolidation Act, injury must be done to land or some interest in land, and that a mere personal injury, though connected with the enjoyment of particular land, is not ground for compensation. *Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358; 17 W. R. 1094; 33 J. P. 710. And see *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 31 L. T. (N.S.) 182; 23 W. R. 115; 38 J. P. 820. The language of section 68 of the Lands Clauses Act, however, differs materially from that used in the present section.

The damage is referred to in the text in very general terms, and appears to include every kind of loss caused by the action of the authority, though it only applies to such damage when the act is required to excuse or justify it. See *Broadbent v. Imperial Gas Company*, 3 Jur. (N.S.) 221; 26 L. J. Ch. 276; *Southampton and Itchen Bridge Company v. Southampton Local Board*, 8 E. & B. 801; 27 L. J. Q. B. 128; 3 Jur. (N.S.) 1261. "Acts which give to parties injured a right of compensation must be taken to mean that while they take away from the owners of property the right to bring actions, they provide that parties injured by the exercise of those powers shall not be damnified by being deprived of their right of action; and, correlatively,

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Section 308.

that such persons shall have no right to compensation unless the injury which they have sustained by the exercise of the powers is such as would, but for the provisions of the Acts, have been actionable."—Per COCKBURN, C.J., in *New River Company v. Johnson*, 2 E. & E. 435, 442; 29 L. J. M. C. 93; 24 Jur. 374; 8 W. R. 179; 24 J. P. 244. And it was held by the House of Lords that unless an injury occasioned by the act of a public company would have been the subject of a claim for damages before the company obtained statutory powers to do that which occasioned the injury, it could not, except it were expressly so provided, be a subject for compensation when occasioned by something done in the exercise of those powers. *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175; 36 L. J. Q. B. 204; 16 L. T. (N.S.) 542; 15 W. R. 937; 31 J. P. 484. And see *Herring v. Metropolitan Board of Works*, 34 L. J. C. P. 224. There, for the purpose of making a sewer, the defendants had erected a hoarding in a street which rendered the access to the plaintiff's premises less convenient than before, but no part of the plaintiff's premises was taken, nor did it appear that the hoarding was kept up beyond a reasonable time. It was held that the plaintiff was not entitled to compensation for the damage sustained by the erection of this hoarding, for such an obstruction might lawfully have been made by a private person, and *à fortiori* might be made by a public body in the discharge of its duties.

This principle was further illustrated in *Hall v. Bristol (Mayor of)*, L. R. 2 C. P. 322; 36 L. J. C. P. 110; 15 L. T. (N.S.) 572; 15 W. R. 404; 31 J. P. 376. That was an action on an award of compensation for damage caused by the making of a sewer. The judge, BLACKBURN, J., left it to the jury to say whether the making of the sewer caused the plaintiff's land to give way independently of the weight put upon it during the last twenty years, and told them that if they thought the damage would not have been caused unless the extra weight had been put upon it, they ought to find for the defendants. It was held that the direction was right, for compensation could not be claimed for any damage which would not have been actionable if the local board had not been acting under the authority of that Act. And see *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. (N.S.) 46; 24 W. R. 1053.

When a justice refuses to condemn as unwholesome meat seized under section 116, *ante*, p. 136, the owner is entitled to include in the amount of full compensation recoverable by him under this section from the local authority the costs incurred through the attendance of himself and his witnesses before the justice. *Re Bater and Birkenhead (Mayor, &c., of)* [1893], 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. (N.S.) 220; 41 W. R. 513; 58 J. P. 7; 4 R. 438.

A local board gave notice to pave and level a street under the section of the Act of 1848 corresponding to section 150, *ante*, p. 176. In default of the owner they did the work themselves, and in so doing they altered the level of the street so that the access to a house was rendered difficult and dangerous. It was held that though the owner might be liable to pay his proportion of the expenses, he was entitled to compensation for the special damage he had sustained. *Reg. v. Wallasey Local Board*, L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 17 W. R. 766; 33 J. P. 677; 21 L. T. (N.S.) 90; 10 B. & S. 428. Where the footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees, so as to raise the level of the footpath in front of the house of the plaintiff and caused him damage, it was held that the street was not, by reason of its being a turnpike road, excluded by the interpretation clause from the operation of the section giving the board power to alter the street; and that as they were exercising powers given by the Act, the plaintiff was entitled to compensation. *Nutter v. Accrington Local Board*, 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802; 43 J. P. 635. BRAMWELL, L.J., dissented from this decision, holding that as the board had all the powers of the turnpike trustees to alter the level of the road, and as no action would lie against the trustees, the principle of *Boulton v. Crowther*, *infra*, was applicable, being apparently of opinion that the raising of the road was done in exercise of powers other than those created by the Act. This view was adopted in a subsequent case, where there had been a subsidence of a road in front of certain houses and the houses also had subsided, the local board raised the road to its original level. It was held that the owners of the houses could not claim compensation, as the work was not done by reason of "the exercise of any of the powers of the Act" within the meaning of this section. These words the court held to apply to powers created by the Act, and not simply to powers transferred by section 144

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from the surveyor to the board; and as the raising of the roads was done by the board either in pursuance of their duty as surveyors of highways, or in exercise of such powers as surveyors have, the owners of the houses were not entitled to compensation. *Burgess v. Northwich Local Board*, 6 Q. B. D. 264; 50 L. J. Q. B. 219; 44 L. T. (N.S.) 154; 29 W. R. 931; 45 J. P. 256.

A plaintiff claimed on an award for compensation. The defence was that the claim was for damage alleged to have been incurred in laying a sewer, and that the sewer had been laid before the plaintiff's title accrued. KENNEDY, J., held that the plaintiff could not recover. *Helmore v. East Ham Local Board*, "Times," 13th December, 1893; affirmed in C. A., 9th February, 1894.

(b) In illustration of the words "the exercise of any of the powers of this Act," reference may be made to the cases cited in the notes to the Public Authorities Protection Act, 1893, *post*. An urban sanitary authority, on account of an epidemic of measles, ordered a board school to be closed for a fortnight, whereby the master lost his fees, amounting to 30s. a week. He claimed compensation under the above section. But it was held that he had no valid claim, the power to close the school being given by the Education Code, 1886, s. 98, and not by this Act. *Roberts v. Falmouth Urban Sanitary Authority*, 52 J. P. 741.

With reference to the principles of valuing land for compensation, see *Mordue v. Durham (Dean and Chapter of)*, L. R. 8 C. P. 336; 42 L. J. C. P. 114; 28 L. T. (N.S.) 593; and in regard to mines, *In re Corporation of Huddersfield and Jacomb*, *post*, p. 406, and *Great Western Railway Company v. Smith*, 2 Ch. D. 235; 45 L. J. Ch. 235; 34 L. T. (N.S.) 267; 24 W. R. 443; 40 J. P. 469.

By a Scotch Act, 25 & 26 Vict. c. 101, s. 186, commissioners were empowered to cause to be made under the streets, public or private, such main and other sewers as should be necessary, and if needful, to carry such sewers through and across all underground cellars and vaults under any such streets, doing as little damage as might be, and making full compensation for any damage done; and if, for completing any of the aforesaid works, it should be found necessary to carry them into or through any enclosed or other lands, to carry the same into or through such lands accordingly, making full compensation. The owner of two private streets lodged a statutory claim of 1,250*l.* for (1) ground permanently taken for sewage and drainage works; (2) surface and underground damage, loss, and inconvenience; (3) right of way for the sewers and other works, including right of access. It was held (1) that the commissioners were not liable in compensation for damage done by merely carrying sewers under a private street, or for way leave; (2) that under the above claim an issue of damage to certain small parts of the line of streets alleged not to have been converted into private streets or dedicated to the public could not be tried. *Leith Magistrates v. Field*, 6 Ct. of Sess. Cas., 4th series, 185; 16 Scottish Law Reporter, 101.

The cases cited in the preceding note show that the damage is limited to acts done in pursuance of powers given by this Act which the provisions of this Act are necessary to justify. But where an act is done by a public body in pursuance of powers given to them by statute, no action lies against them at the suit of a private individual for injuries sustained by him by reason of the exercise of these powers. *Boulton v. Crowthor*, 2 B. & C. 703. Therefore, it was held that no action would lie against a local board for damage caused by the lowering of the soil of a street under the section corresponding to section 149, *ante*, p. 169. *Bold v. Williams*, 21 J. P. 84. If, however, the damage is caused by negligence in the exercise of the statutory powers, an action lies. Thus, where by the construction of a sewer an ornamental pond and rivulet in the plaintiff's grounds were drained, it was held that the board constructing the sewer could not be restrained by injunction, as they had not exceeded their statutory rights. It was also held that if the injury had been caused by the unskilful or improper construction of the sewer, the court would have interfered to prevent it, but as this was not the case, the rights of the plaintiffs were limited to a claim for compensation. *Stainton v. Woolrych*, 23 Beav. 225; 26 L. J. Ch. 300. "The distinction is clearly established between damage from works authorised by statutes, where the party generally is to have compensation and the authority is a bar to an action, and damage by reason of the work being negligently done, as to which the owner's remedy by action remains."—Per CROMPTON, J., in *Brine v. Great Western Railway Company*, 2 B. & S. 402, 411; 31 L. J. Q. B. 101; 8 Jur. (N.S.) 410; 6 L. T. (N.S.) 50; 10 W. R. 341; 26 J. P. 516. This distinction was followed in *Clothier v. Webster*, 6 L. T. (N.S.) 461. There the court held that where damage was caused by the negligent laying of a sewer, the

owner of the property damaged might bring his action, and was not put to his claim for compensation. For a case where a local authority were held liable in respect of the negligent filling in of a trench in which a sewer had been laid, see *Cox v. Paddington Vestry*, 64 L. T. (N.S.) 566; of which the facts are stated, *ante*, p. 162.

And see *Hall v. Batley (Corporation of)*, 47 L. J. Q. B. 148; 37 L. T. (N.S.) 310; 42 J. P. 151. The dictum of CROMPTON, J., *supra*, was also adopted by the House of Lords in *Mersey Docks v. Gibbs*, L. R. 1 H. L. 93, 112; 35 L. J. Ex. 225; 14 W. R. 872; 30 J. P. 467. And see *Coe v. Wise*, L. R. 1 Q. B. 711; 37 L. J. Q. B. 262; 7 B. & S. 831; 14 W. R. 865; 30 J. P. 484; *Raleigh Corporation v. Williams* [1893], A. C. 540; 63 L. J. P. C. 1; 69 L. T. (N.S.) 506; 1 R. 431.

The liability of a body created by statute is governed by the statutes which create it. The powers conferred when exercised at all must be exercised with due care. In the absence of a contrary intention, its duties and liabilities are the same as those imposed by the general law on a private person doing the same thing. But for mere nonfeasance no action lies except in regard to a duty towards the plaintiff, imposed by the statute and negligently omitted. *Gibraltar Sanitary Commissioners v. Orfila*, 15 App. Cas. 400; 59 L. J. P. C. 95; 63 L. T. (N.S.) 58. And see *Loader v. London and India Docks Joint Committee*, 65 L. T. (N.S.) 674; 7 T. L. R. 546; affirmed in C. A., 56 J. P. 165; 8 T. L. R. 5.

There may be a right of action for compensation under a statute, as where the tribunal appointed by this statute to assess the compensation has ceased to exist. *Bentley v. Manchester, Sheffield, and Lincolnshire Railway Company* [1891], 3 Ch. 222; 60 L. J. Ch. 641; 65 L. T. (N.S.) 22, but such a state of circumstances can never arise under this Act.

When the damage is caused by work, the doing of which is not authorised by the section, the remedy is by action, and not by a claim for compensation under this section. *Reg. v. Darlington Local Board*, 6 B. & S. 562; 33 L. T. (N.S.) 305; 13 W. R. 789; 29 J. P. 419.

When a local board interfered with a watercourse in a manner not authorised by 21 & 22 Vict. c. 98, s. 68, sub-section (3), corresponding to section 327, sub-section (4), *post*, it was held that they might be restrained from so doing, and that the person injured would not be left to his remedy for compensation only. *Grand Junction Canal Company v. Shugar*, L. R. 6 Ch. 482; 24 L. T. (N.S.) 402; 19 W. R. 569; 35 J. P. 660.

The fact that a claim for compensation has been made under this section will not estop the plaintiff from obtaining relief by injunction or damages, if he is in law entitled to bring an action for such relief. *Pentney v. Lynn Paving Commissioners*, 12 L. T. (N.S.) 818.

A local board assuming to act under section 39, *ante*, p. 66, erected a public urinal, partly upon a highway and partly upon a strip of land belonging to the plaintiff, and so near to other adjoining land of the plaintiff as to be a nuisance to her and her tenants, and to depreciate the value of her property. It was held that the plaintiff was entitled to a mandatory injunction to restrain the board from continuing the urinal upon her land, or so near thereto as to cause injury and annoyance to her or her tenants, and that it was not a matter in respect of which the plaintiff's remedy was by compensation under this section. *Sellors v. Matlock Bath Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 762.

But, on the other hand, in the same case, it appeared that abutting upon the highway, the plaintiff had land upon which an inn and some stabling were erected. These stood back from the highway and in front of them was an open space forming part of the same land which had been left open to and on a level with the highway, until the defendants in exercise of their powers under section 149, *ante*, p. 169, and for the convenience of the public, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's land and premises. It was held that the plaintiff was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct, the remedy for any injury caused by the kerbstones would be by compensation under this section.

The defendants were owners of a quay over which there was a public right of way to their docks. The G. Railway Company by their private Act were empowered to enter and did enter into an arrangement with the defendants to lay tramways connecting the docks with the railway system. The company were to keep the tramways in good working order. Under the Tramways Act, 1870, the company as promoters gave notice to the defendants of their intention to open and break up the

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road for the purpose of doubling the rails at a particular point. The company did break up the highway for their tramway purposes. The plaintiff was injured by being thrown from his cart through the defective condition of the roadway at the place where the works were being carried out, and brought his action for compensation against the defendants as owners of the highways. The jury at the trial found that the accident was due to the negligence of the company who were in possession of the spot when the occurrence took place, and that the roadway was in a defective condition owing to a breach of duty on the part of the railway company, and gave the plaintiff substantial damages. It was contended in argument on behalf of the plaintiff that on these findings he was entitled to have the verdict entered for him, but it was held that as the company were carrying out their works not under the orders or as licensees of the defendants, but under their statutory powers, and were in sole possession of the place where the accident happened, which was entirely under their control, and as the negligence causing the accident was that of the company and not of the defendants, the verdict ought to be entered for the defendants. *Barham v. Ipswich Dock Commissioners*, 54 L. T. (N.S.) 23.

If a public body do something in the exercise of their statutory powers they are not liable in respect of annoyance, not amounting to nuisance, of a temporary character in the execution of the work. *Harrison v. Southwark and Vauxhall Water Company* [1891], 2 Ch. 409; 60 L. J. Ch. 630; 64 L. T. (N.S.) 864.

(c) These words are new. They qualify the claim, but apparently apply to those cases where, owing to the default of the owner of the house or land, the sanitary authority are compelled to interfere with his property.

(d) In ascertaining the proper amount of damage in respect of the making of a sewer, an arbitrator is entitled to take into consideration future as well as present damage, such as the impossibility of building over it. But *quære* whether he may take into consideration the possible defective construction of it, and the annoyance likely to arise from the opening of manholes and from stench caused thereby. *Utley v. Todmorden Local Board*, 44 L. J. C. P. 19; 31 L. T. (N.S.) 445; 39 J. P. 56.

Prospective damage, as well as actual injury, must be taken into consideration.—Per BRETT, L.J., in *Re Dudley*, *infra*; and see *Colac v. Summerfield* [1893], A. C. 187; 62 L. J. P. C. 64; 68 L. T. (N.S.) 769.

Where a corporation were under a local Act empowered to make a conduit for water through a field at some distance below the surface, it was held that it was not necessary for them to make compensation for damage by severance of minerals when they were not required by the Waterworks Clauses Act, 1847, to purchase them. *In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92; 44 L. J. Ch. 96; 31 L. T. (N.S.) 466; 23 W. R. 100. See with reference to the purchase of minerals the Public Health (Support of Sewers) Act, 1883, *post*.

Where a local authority constructed a sewer under a public footpath, the soil of which belonged to the plaintiff, and made a shaft thirty feet deep into the sewer, with an entrance or manhole upon the footpath at a point where there was a junction of two sewers, it was held that the local authority were justified in so doing, a manhole being part of the sewer, and that the plaintiff's remedy was compensation under this section. *Swanston v. Twickenham Local Board*, 11 Ch. D. 838; 42 L. J. Ch. 623; 40 L. T. (N.S.) 734; 27 W. R. 924; 43 J. P. 380.

It seems from the judgment of JESSEL, M.R., in *Taylor v. Oldham (Corporation of)*, 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 178, that if a local authority lay a sewer in a private street, their so doing amounts to a compulsory taking of that part of the subsoil occupied by the sewer, and that they are bound to compensate the owner of the soil. It follows also from the remarks of the same judge in *Roderick v. Aston Local Board*, 5 Ch. D. 328, 333; 46 L. J. Ch. 802; 36 L. T. (N.S.) 170, 328; 25 W. R. 403, that this section would include a claim for compensation for lateral support to a sewer. And see *Leith Magistrates v. Field*, *ante*, p. 404. In a subsequent case it was held that the Act imposed upon landowners, through whose land a sewer was laid, an obligation to preserve to such sewer a subjacent support, and gave them a right to immediate compensation for being deprived of free power to work subjacent mines, but not for the risk of percolation of sewage into the subjacent mines, as such percolation could only be caused by wrongful working of the mine. *In re Corporation of Dudley*, 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. These decisions as to support have, however, been to some extent affected by the Public Health (Support of

Sewers) Act, 1883, *post*. The Gasworks Clauses Act, 1847, gives a gas company incorporated under it a right of support for their pipes, and a correlative right of compensation to the landowner for the burden thus cast upon him and for the limitation thus put upon the uses of his land. Note to
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Where a private Act provided that all houses for slaughtering horses within a certain distance of a workhouse should be deemed public nuisances and removed, provided, however, that if they existed before the Act the owners were to be entitled to compensation, it was held that a defendant might be indicted at common law if his house was so conducted as to be a public nuisance apart from the Act, and that in such case he would not be entitled to any compensation. *R. v. Watts*, 2 C. & P. 486.

It would seem that the local authority are not bound to make or tender compensation *before* doing an act which will have the effect of causing damage. See *Lister v. Lobley*, 7 A. & E. 124.

Quære, whether there is any limitation of the time within which a claim must be made under this section. See *Pettward v. Metropolitan Board of Works*, 19 C. B. (N.S.) 489; 34 L. J. C. P. 301. The limitation in section 264, *ante*, p. 352 (now replaced by the Public Authorities Protection Act, 1893, *post*), has been held not to apply. See *Delaney v. Metropolitan Board of Works* in the notes to that Act, *post*.

(e) The local board of S. made a sewer through the land of B., who claimed compensation. The board maintained that the land was not damaged, and consequently that B. was not entitled to any compensation. B. called upon them to appoint an arbitrator under the section of the Public Health Act, 1848, which corresponds with section 180, *ante*, p. 251. The board refused to do so. B. appointed an arbitrator, who ultimately made an award *ex parte*. On motion to set aside this award, it was held that as the local board had made the sewer and were liable to make compensation if there was any damage, the dispute was only as to the amount of compensation, which the arbitrators might have assessed at nothing. *Bradley v. Southampton Local Board*, 4 E. & B. 1014; 24 L. J. Q. B. 239; 3 W. R. 413; 3 C. L. R. 771; 19 J. P. 644; 1 Jur. (N.S.) 778. It was assumed by the court that had there been a question of liability, the proceedings by arbitration would not have been valid. In *Bradford Local Board v. Hopwood*, 6 W. R. 818, however, Wood, V.C., refused to restrain a claimant from proceeding by arbitration, the motion for the injunction being founded on the allegation that there was a dispute as to liability, and not merely as to the amount of compensation. In a subsequent case the ground of the decision was that an arbitrator appointed under this section would have had no jurisdiction to make an award if the liability, as distinguished from the amount of the compensation, was in dispute. *Reg. v. Burslem Local Board*, 1 E. & E. 1077; 28 L. J. Q. B. 345; 24 Jur. 696; 8 W. R. 584; 24 J. P. 563. These cases were much discussed in *Pearsall v. Brierley Hill Local Board*, 11 Q. B. D. 735; 52 L. J. Q. B. 529; 49 L. T. (N.S.) 486; 32 W. R. 141; 47 J. P. 628 (since affirmed in the House of Lords, 9 App. Cas. 595; 54 L. J. Q. B. 25; 51 L. T. (N.S.) 577; 33 W. R. 56; 49 J. P. 84), which, if it does not overrule the previous decisions, at least decides that they are not to be taken as applicable to the construction of this section. There the Court of Appeal decided that a person who claims compensation for damage, sustained by reason of the exercise of the powers of the Act, is entitled under section 308 to have the amount of compensation determined by arbitration in the manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the question of amount. It would seem, therefore, that if the local authority dispute the liability, they ought to refuse to fulfil the award and leave the claimant to his action on the award. See *Walker v. Beckenham Local Board*, 50 L. T. (N.S.) 206; 48 J. P. 264.

(f) See section 179, *ante*, p. 250.

(g) This statement of the option is new. It is not quite clear how it is to be determined. The local authority will not seek to recover the amount, and if the claimant decline to go before the justices, it is difficult to see how he can be compelled to do so, but if he select that court the local authority must follow.

(h) See section 251, *ante*, p. 333. The justices may add to the amount of compensation, the costs of the application to them. *Huddersfield (Corporation of) v. Shaw*, 54 J. P. 724.

Section 309.

Compensation
in certain
cases to
officers.

309. If any officer of any trustees, commissioners, or other body of persons intrusted with the execution of any local Act, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts,^(a) or any officer of any sanitary authority under the Sanitary Acts^(b) by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts,^(c) removed from his office, or deprived of the whole or part of the emoluments^(d) of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may by order award to such officer such compensation as the said Board may think just ;^(e) and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.

(a) See the definition in Schedule V., Part 1, *post*.

(b) See the definition in section 4, *ante*, p. 21.

(c) See section 303, *ante*, p. 397.

(d) As to what are emoluments, see *Reg. v. Norwich (Corporation of)*, 8 A. & E. 633 ; *Reg. v. Local Government Board*, L. R. 6 Q. B. 785 ; 41 L. J. M. C. 16 ; 25 L. T. (N.S.) 304 ; *Reg. v. Local Government Board*, L. R. 9 Q. B. 148 ; 43 L. J. Q. B. 49 ; 29 L. T. (N.S.) 769 ; 22 W. R. 315 ; 38 J. P. 165 ; *Reg. v. Postmaster-General*, 3 Q. B. D. 428 ; 47 L. J. Q. B. 435 ; 38 L. T. (N.S.) 89 ; 26 W. R. 322. As to who is an officer within the meaning of the section, see *Legg v. Stoke Newington Vestry*, "Times," 28th May, 1895, cited in the note to the definition of "officer" in section 100 of the Local Government Act, 1888, *post*.

(e) As to awards of compensation by the Local Government Board, see *Reg. v. Local Government Board*, *supra*. The words of the section appear to give that Board a discretion as to whether they will grant any compensation, but it would seem from the case just cited that the officer is entitled to compensation.

In fixing the amount of compensation the Board do not look to the strict legal tenure of office, but to the reasonable expectation of its duration. Most of the officers appointed under the Public Health Act, 1848, hold at the discretion of the local authority, nevertheless the board consider them, as a general rule, officers entitled to compensation for a reasonable term.

Whether an order under this section can be questioned is doubted, regard being had to section 295, *ante*, p. 389.

Provision
where im-
provement
Act district
or local
government
district
becomes a
borough.

310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners,^(a) or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers, rights, duties, capacities, liabilities, obligations, and property exercisable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament,^(b) within or for the benefit of such district or part of a district, shall pass to and be exercisable by and vested in the council of such borough.^(c)

The transfer by virtue of the Public Health Act, 1872, of the powers, rights, duties, capacities, liabilities, obligations, and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers, rights, duties, capacities, liabilities,

obligations, and property exercisable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament. (d) Section 310.

(a) See the definition in section 4, *ante*, p. 4.

(b) Do these words carry powers other than sanitary powers possessed by these commissioners? The point is doubtful, and should be cleared up by the Act constituting the borough, if there be one, or by the Act extending the borough boundaries. Where the borough is created by charter the point will remain open.

(c) The words "council of such borough" mean the mayor, aldermen, and burgesses acting by the council. The effect of the section, therefore, is that, when the district is incorporated as a borough, all the property of the board (including property acquired by them by purchase after the passing of the Act) vests at once in the corporation without the necessity of any conveyance or transfer. In such a case the Bank of England are bound, on the request of the corporation, to register in their corporate name government stock previously standing in the books of the bank in the name of the local board, without requiring any transfer to be executed. *Hyde (Corporation of) v. Bank of England*, 21 Ch. D. 176; 51 L. J. Ch. 747; 46 L. T. (N.S.) 910; 30 W. R. 790.

(d) This is a provision which was omitted in 35 & 36 Vict. c. 75, s. 7. See 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V., Part III., *post*.

311. Any local board constituted either before or after the passing of this Act may, with the sanction of the Local Government Board, change their name. Every such change of name shall be published in such manner as the Local Government Board may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name. Power of local boards to change name.

See as to the name of the local board, section 7, *ante*, p. 26. The Local Government Board have required the local board to pass a precise resolution reciting the necessity for the change, and to send a copy to them. They have given their sanction under seal, and have required the change to be published in the *London Gazette*, and in the local newspapers.

A change of name will cause, in old-established boards, much inconvenience, and should not be adopted without serious necessity.

In some provisional orders, provision has been made for a change of the name of the local board.

It may be observed here that local boards are now called urban district councils. See 56 & 57 Vict. c. 73, s. 21, *post*.

312. *The retirement and mode of election of members of any authority invested by any local Act with powers of town government and rating, whose retirement and mode of election were at the time of the passing of this Act regulated by the Local Government Acts, shall be regulated in all respects by the rules for election of local boards contained in Schedule II. to this Act; but this enactment shall not affect the qualification fixed for members of such authority by the local Act under which such authority are constituted, or the qualification and tenure of office of any ex officio members of such authority.* As to election of certain improvement commissioners, &c. [Repealed by 56 & 57 Vict. c. 73, s. 89.]

This section is now repealed by 56 & 57 Vict. c. 73, s. 89 *post*.

Section 313.

Substitution
in other Acts
of provisions
of this Act
for provisions
of repealed
Acts.

313. Where in any Act, or order made by one of Her Majesty's principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts^(a) which are repealed by this Act are mentioned or referred to, such Act, order, or document, shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act, order, or document expressed in relation to the repealed provisions therein mentioned or referred to.

(a) See the definition in section 4, *ante*, p. 21, and section 323, *post*.

Bye-laws as
to hop-
pickers.

314. Any local authority may, if they think fit, make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority.

See section 182, *ante*, p. 256, as to the making of bye-laws, and section 251, *ante*, p. 333, as to enforcing them.

Bye-laws upon this subject will be made chiefly, if not entirely, by rural sanitary authorities. Model bye-laws under this section have been issued by the Local Government Board.

This section is extended to fruit-pickers by 45 & 46 Vict. c. 23, *post*.

As to bye-
laws incon-
sistent with
this Act.

315. Any bye-law made by any sanitary authority under the Sanitary Acts^(a) which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed.^(b)

(a) See definition in section 4, *ante*, p. 21.

(b) See section 326, *post*, as to bye-laws made by sanitary authorities before the passing of this Act.

This section doubtless applies to bye-laws made under local Acts which incorporate any of the Sanitary Acts as well as to those made under these Acts.

As to con-
struction of
incorporated
Acts.

316. In the construction of the provisions of any Act incorporated with this Act the term^(a) "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order^(b) confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act.^(c)

(a) These terms are found in such incorporated Acts as the Lands Clauses Act, the Waterworks Clauses Act, the Markets and Fairs Clauses Act, &c. All the incorporated statutes will be found in the Appendix.

(b) It would have been more correct to say any Act confirming an order.

(c) See sections 251—4, *ante*, pp. 333—338.

This provision creates some difficulty. It will be remembered that section 253

ante, p. 337, provides that no proceedings are to be taken to recover penalties except by a party aggrieved, by the local authority, or by a person having the consent of the Attorney-General. In some cases arising under incorporated Acts the police are authorised by such Acts to arrest offenders and take them before justices. See, for example, the Towns Police Clauses Act (10 & 11 Vict. c. 89), s. 28. It may be doubted whether the power to arrest requires any authority of the local board, as the power to arrest seems to imply the power to charge the defendant before a justice; but *quære*, whether the police can proceed by summons against offenders under such an incorporated statute, except by virtue of an authority under section 253. It is submitted that they cannot. The same view has been taken by the Home Office. See 58 J. P. 483.

Note to
Section 316.

317. The schedules to this Act shall be read and have effect as part of this Act. Construction of schedules.

The forms contained in Schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

Temporary Provisions.

318. *Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section twelve of the Public Health Act, 1872.* As to clerk and treasurer of certain authorities.
[Repealed by 46 & 47 Vict. c. 39.]

This section has been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

319. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act. As to special district rates.

Special district rates were authorised by 11 & 12 Vict. c. 63, s. 86, but the making of them for the future was prohibited by 21 & 22 Vict. c. 98, s. 54. As, however, charges upon them had in some cases been created under the former Act, such charges had still to be provided for by the levying of such rates. The 24 & 25 Vict. c. 61, s. 12, enabled the special district rate to be levied as part of the general district rate when the areas of the two rates were the same; and section 13 provided for the payment of such rates when made for a part of the district only out of the general district rate with the consent of the creditors and of the owners and ratepayers by means of a fresh loan. These charges are, however, extinguished in all or nearly in all cases.

320. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act, 1872, divided between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application either of landlord or tenant, by order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act. Division of expenses between landlord and tenant in certain cases.

The provisions of this section apply only to provisions in a few local Acts relating to boroughs. The section is somewhat troublesome, as it requires a separate order

Note to Section 320. for every case. The Local Government Board require the application to be in writing on folio foolscap paper. The applicant is not likely to be the landlord, and therefore the tenant has been required to give his landlord's name and address, the term of his lease, and the amount of his rent. The Board will not make an order *ex parte*. This section can hardly be applicable to many cases at this date.

Validity of certain securities.

321. Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

See the definition of Sanitary Acts in section 4, *ante*, p. 21. It does not appear that any court of law has decided that when a statute requires a loan to be liquidated within a certain time, it is not lawful to make it repayable within a shorter period. It is doubtful whether any court would so decide. But opinions have been given by counsel of repute to that effect, and this section is framed to meet that opinion, and to remove the objection if it should be raised.

As to certain turnpike trustees.

322. Where by any local Act powers are conferred on any turnpike trustees for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained.

This section might perhaps have been appropriately appended to section 6, *ante*, p. 24. It deals with a very special and unusual case, which was provided for by 37 & 38 Vict. c. 89, s. 3, and the transfer took effect under that Act.

As to main sewerage districts and joint sewerage boards.
11 & 12 Vict. c. 63.

323. Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for the purposes of main sewerage only, (a) or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act, 1867, (b) the Local Government Board may, by provisional order (c) dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such order ; (d) and until an order has been made by the Local Government Board under this section, the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed : Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts (e) which are in force within the district of any such authority at the time of the passing of this Act and are repealed by this Act shall be deemed to be substituted for those enactments. (f)

Any order (g) made under this section may, if necessary, provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts, parishes, or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom

any moneys found to be due are to be paid and the mode of raising such Section 323. moneys.

(a) In 11 & 12 Vict. c. 63, s. 10, reference was made to a district formed for the purposes of main sewerage. No other statutory provision was made for such a district, and it does not appear how the district was to be formed, constituted, regulated, or provided with funds. The General Board of Health did, however, form one or two such districts, and their existence was recognised in 37 & 38 Vict. c. 89, s. 57.

(b) The Act referred to is 30 & 31 Vict. c. 113, ss. 10—14. It is now repealed, but the provisions of it relating to the formation of joint sewerage boards are practically re-enacted in sections 279—84, *ante*, pp. 379—382.

(c) See section 297, *ante*, p. 391, as to provisional orders.

(d) A united district is formed under section 279, *ante*, p. 379; under that section, however, the Board must be applied to before they can constitute the united district, while under this section they can act *ex mero motu*.

(e) See the definition in section 4, *ante*, p. 21.

(f) See further, section 313, *ante*, p. 410.

(g) See section 275, *ante*, p. 376, and section 304, *ante*, p. 398. This order is not provisional, but according to section 295, *ante*, p. 389, is final and conclusive.

324. *The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed, not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act.* As to audit of certain accounts. [Repealed by 46 & 47 Vict. c. 39.]

325. *The power conferred by section 20 of "The Public Health Act, 1872," of temporarily constituting a port sanitary authority, shall be deemed to have authorised a renewal from time to time of any order made under that section.* As to certain orders under section 20 of 35 & 36 Vict. c. 79. [Repealed by 46 & 47 Vict. c. 39.]

This and the preceding section have been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

Saving Clauses.

Section 326. **326.** All urban sanitary authorities and rural sanitary authorities existing *(a)* at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act; *(b)* and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts, *(c)* and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts under this Act; and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) *(d)* for such time as they would respectively have held office if this Act had not been passed; and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions as to duties, remuneration, and otherwise, as they would have held them if this Act had not been passed; *(e)* and all bye-laws duly made under any of the Sanitary Acts *(c)* by this Act repealed, and not inconsistent with any of the provisions of this Act, shall be deemed to be bye-laws under this Act; *(f)* and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts *(c)* by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts, *(c)* or any of them, before the passing of this Act, and existing at the time of the passing of this Act. *(g)*

Provision
as to the
sanitary
authorities
existing at
the passing
of this Act,
and their
officers, &c.

(a) They are assumed to be legally constituted, but the section does not in itself confer legality on the acting bodies.

(b) Consequently they would be able to execute all the powers and be subject to all the duties provided by the Act; but the last part of the section enacts the proposition in terms.

(c) See the definition in section 4, *ante*, p. 21.

(d) These provisions were contained in Schedule II., Part 1, now repealed by the Local Government Act, 1894, *post*, as obsolete.

(e) See also section 318, *ante*, p. 411.

(f) See sections 182, *ante*, p. 256; and 251, *ante*, p. 333. See *James v. Wywill*, *ante*, p. 220.

(g) See section 343, *post*. In *Reay v. The Mayor of Gateshead*, 55 L. T. (N.S.) 92; 34 W. R. 682; 50 J. P. 805, 821, *ante*, p. 220, DENMAN, J., said: "The intention of the legislature cannot have been as strong as to make that valid which was invalid by an Act which was the very Act in force at the time the bye-law was made. I do not think that is the effect of the Act of 1875 (in the text). All it means to do, as it seems to me, is to enact that if there be a bye-law which is valid at the time it is made under a former Act, and that bye-law is not inconsistent

with the provisions of the later Act, then, in that case, it shall be deemed to be a good bye-law, and it shall not be necessary to make it over again. But it seems to me it would be going too far to hold that a bye-law is duly made under the new Act, when it was not properly made under the old Act and without jurisdiction, and to say that it is validated and made good merely by the passing of the subsequent Act, under which if it were made it would be a good bye-law." Note to Section 326.

327. Nothing in this Act(a) shall be construed to authorise any local authority— Saving for works and property of certain authorities, and for navigation and water rights, &c.

- (1.) To use, injure, or interfere with any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land ;(b) or
- (2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being ; or
- (3.) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof,(c) in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof ; or
- (4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference ;(d) or
- (5.) To interfere with any bridges crossing any river, canal, dock, harbour, or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof ; or
- (6.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Section 327. Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, (e) in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent. (f) And nothing in this Act shall prejudice or affect the rights, privileges, powers, or authorities, given or reserved to any person under such local or private Acts for draining, preserving, or improving land as are in this section mentioned.

(a) The effect of this and the following sections is apparently to prohibit the local authority from acting, without the necessary consent, in the matters prohibited, even although they may be prepared to pay due compensation under section 308, *ante*, p. 402. In the report of the Select Committee of the House of Commons on the Public Health Act (1875) Amendment Bill (1878), R. No. 134, p. xiv.) it is stated that "several provisional orders have been obtained under the belief that the compulsorily taking of water rights by provisional order was legal under the meaning assigned to the word 'lands,' the word 'lands' being defined to include 'messuages, buildings, lands, easements, and hereditaments of any tenure,'" and it was thought that under the definition a local authority could purchase water rights compulsorily under the 176th section of the Act of 1875. During the last session of Parliament a committee of the House of Lords, when considering a provisional order for the purchase of water rights under that section by the local board of the West Houghton district, decided that the order was *ultra vires*, and therefore it was not confirmed. The law officers of the Crown were then consulted, and they advised: "We are of opinion that in issuing a provisional order under section 176, the Local Government Board cannot confer upon a local authority power to purchase for the purposes of the Act and otherwise than by agreement any right to abstract water from any stream." It follows from this that no provisional order which proposes to take water rights otherwise than by agreement can be made under the Public Health Act. . . . A local authority could still obtain compulsory powers by a private Bill, but it has been pointed out that the cost of obtaining a private Bill is much higher than that of obtaining a provisional order.

(b) It will be remembered that by section 13, *ante*, p. 32, such sewers do not vest in the local authority as other sewers do.

(c) There is no exception of public navigable rivers on the sea-shore. The local authority cannot disturb any private interest therein, but even if they avoid all such disturbance they may still be prevented from doing any act which will interfere with the rights of the Crown. The Board of Trade or the Admiralty must be consulted with reference to the sea-shore and harbours.

It must be remarked that the text does not refer to pollution, but to interference with navigation. Reference should be made to section 17, *ante*, p. 40, and the notes thereon, as to the pollution of streams by sewage. See also the Rivers Pollution Prevention Acts, 1876 and 1893, in the Appendix.

In *Reg. v. Bradford Navigation (Proprietors of)*, 31 L. J. Q. B. 191; 11 Jur. 766; 29 J. P. 613, the Court of Queen's Bench laid down this principle, that statutory powers, though framed for the public benefit, are only co-extensive with the power to exercise them without an infringement of the general law. Where the exercise is not compulsory on the grantees, and new and unforeseen circumstances subsequently arise which render the exercise of them a nuisance, such exercise of them is unlawful. Hence, when a navigation company were empowered by statute to take water from certain streams for the supply of their canal, and the streams became polluted so that the water of the canal caused a public nuisance, it was held that the lessees of the company were properly convicted on indictment. This decision was supported by Wood, V.C., who granted an injunction against the lessees and the company who owned the canal, to prevent them from drawing the polluted water from the streams into the canal, though he granted some time to enable the defendants to provide a remedy if possible. *Attorney-General v. Proprietors of the Bradford Canal*, L. R. 2 Eq. 71; 35 L. J. Ch. 619; 14 L. T. (N.S.) 248; 14 W. R. 579.

(d) The words *injuriously affect* may possibly include pollution as well as diminution in quantity.

Note to
Section 327.

A local board cannot, under cover of legislative powers, make a sewer which will have the effect of polluting the water of a canal:—Held, therefore, that the board must be restrained from permitting sewage communication to be made between the adjoining houses and the main sewer so long as it should discharge into the canal. Power given to a canal company by their Act to supply the canal with water from all brooks, streams, and watercourses within 1,000 yards of the canal, does not so far comprise rain and other surface water which, being collected on the road, ran along an open gutter into the canal, as to preclude the local board from allowing it to fall through gratings into a sewer which they had made under the road for the drainage of their district. *Manchester, Sheffield, and Lincolnshire Railway Company v. Worksop Local Board*, 26 L. J. Ch. 345; 23 Beav. 198.

A watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream. *Sutcliffe v. Booth*, 32 L. J. Q. B. 136; 9 Jur. (n.s.) 1037; 27 J. P. 613.

Any violation of the provisions in this section will be restrained by injunction, and the party injured will not be referred to his claim for compensation. *Grand Junction Canal Company v. Shugar*, ante, p. 49. But see note (a), *supra*.

A local board made certain sewers, and in so doing injuriously affected a stream without having the consent of T., who was the occupier of a mill on the stream, and entitled to the flow of the stream to his mill. It was held that the corresponding provisions of 21 & 22 Vict. c. 98, s. 73, were not confined to cases in which a court of equity would grant an injunction against the local board, and that T. was in the position of a person who would, if the Act had not been passed, have been entitled by law to prevent the injuriously affecting of the stream. It was also held that the works not being authorised by section 73, the claim of T. was not the subject of compensation, but ground of action. *Reg. v. Darlington Local Board*, ante, p. 405.

The words of the concluding part of this clause reserve to the local authority power to challenge the right claimed by the parties referred to, and dispute that right independently of any justification under the Act.

(c) Although the consent is here required to be given in writing, it has been sought to stay summary applications in Chancery for injunctions against the works of local authorities by averments of *laches*, it being argued that such *laches* was equivalent to consent. But this defence was not successful in *Attorney-General v. Luton Local Board*, 2 Jur. (n.s.) 180, where there had been much negotiation and correspondence before the commencement of the suit. See, however, the judgment of WOOD, V.C., in *Attorney-General v. Proprietors of the Bradford Canal Company*, *supra*.

It is to be observed that 21 & 22 Vict. c. 98, s. 68, prohibited the doing of the works adverted to without consent in writing *first obtained*; and this prevented the operation of the law laid down in *Stainton v. Wooltrych*, 26 L. J. Ch. 300; 23 Beav. 225, that works planned by public boards under statutes may be executed though they tend to the injury of neighbouring landowners, and consequently may be executed even without notice to them, though they may be entitled to compensation. Though the words *first obtained* are here omitted, it is presumed that the effect will be the same.

The consent in the text if given will not operate to protect the local authority from the consequences of their committing a public nuisance by their action.

(f) The consent of the directors or other board of management is doubtless referred to, as it would be quite impracticable to refer to the shareholders or general proprietors for their consent, unless by the constitution of the company some means be given for summoning and collecting the body into one meeting.

328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid, (a) interfere with the improvement of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal,

Reference to
arbitration in
case of works
not within
preceding
section.

Section 328. dock, harbour, or basin, or with any land necessary for the enjoyment or improvement thereof, (b) the local authority shall give to such body of persons or person a notice (c) specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration; (d) (that is to say,)

(1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin as aforesaid :

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being *fully* compensated by money. (e)

(a) It is not easy to ascertain what are the matters or things referred to. The previous section appears to prohibit almost all actions of the local board without consent. But it is contemplated that there may be some acts which do not come within the prohibition, and then this section provides for dealing with such acts.

It will be seen that the section refers to companies or persons authorised to act by some Act of Parliament, but such Act need not be a private or local statute.

(b) Probably this refers to the popular phrase "improvement of a navigable river," and the following terms are governed by the word *interfere*; otherwise it is difficult to comprehend how the proposal of the local board can interfere with the improvement of any canal or dock. The proposal must be an immediate act, which can be examined and investigated with reference to the state of things, but that cannot be done with reference to the future improvement, which may possibly be prevented by the Act of the board.

(c) See sections 266, 267, *ante*, pp. 358, 359, as to the authentication and service of notices.

(d) See section 179, *ante*, p. 250.

(e) Note the object of this subject of inquiry, namely, *full* compensation. That may be obtained by a payment in money, or it may be that such payment will not be adequate or quite appropriate; it may be necessary that some work should be executed, and the arbitrator is to determine this question.

It is to be noticed that this section does not contemplate that the arbitrator shall ascertain the amount of compensation for the injury, if any be experienced, but the next section does.

Effect of
arbitration.

329. The result of any such arbitration shall be final, and the local authority shall do as follows; (a) (that is to say,)

(1.) If the arbitrators (b) are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things :

(2.) If the arbitrators are of opinion, that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; (c) and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things :

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated

by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given. *(d)* Section 329.

(a) This section and the preceding section are expressed with some little inaccuracy. First, it is stated in section 328, that two questions are to be submitted to the arbitrators, and afterwards in this section it is shown that another question may be submitted to and decided by them. Thus, this section states that the local authority shall *do as follows*, and having required the arbitrators in a certain event to do a particular act, it empowers the local authority to proceed, and afterwards, upon a decision of the arbitrators in a manner described, prohibits the local authority from acting.

(b) It is presumed that the word *arbitrators* includes umpires. See section 180, sub-section (7), *ante*, p. 252.

(c) It would have been better to provide for compensation after the works have been completed and the amount of the damage actually ascertained, inasmuch as the estimate of the arbitrators may prove too high or too low; it is clear, however, that the payment is here made a condition precedent to the execution of the works.

(d) This will not prevent the local authority from negotiating with the party referred to for the execution of such works as will remove the objection which cannot be fully compensated with money.

330. No transfer of powers and privileges under this Act *(a)* shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal. Provision as to transfer of powers, &c.

(a) See sections 10, 270, 275, and 310, *ante*.

331. Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the surveyor to the local authority, *(a)* take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed *(b)* by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, or basins, or the towing paths thereof, and may do all such things as may be necessary for carrying into effect such taking up, diversion, or alteration. Provision as to alteration of sewers.

(a) Though the certificate of the surveyor is required it does not appear that it will conclude the local board if they can show that the new sewers or pipes are not equally effectual as the old ones; and section 333, *post*, accordingly provides for the reference of such question to arbitration.

According to the language of the above section, no consent is required from the local board previous to the commencement of the works. The certificate of the surveyor is to be given after the works shall have been done. Nevertheless, if it should appear that the parties referred to are working in such a manner as obviously to be unprotected by this Act, an injunction would probably be granted by the High Court to stay these proceedings.

(b) It is to be presumed that these works of the local authority must have been executed with the consent of the parties referred to. Consequently it will be prudent, when such consent is given, to reserve power to make alterations as above contemplated.

Section 332.

Saving for
water rights
generally.

332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir, canal, river or stream, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law^(a) to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the local authority first obtain^(b) the consent in writing of the body of persons or person so entitled as aforesaid.

^(a) See the notes on section 327, *ante*, p. 416. See also *Ripon (Earl of) v. Hobart*, 3 My. & K. 169 ; 3 L. J. Ch. 145, for the principle upon which the court proceeds in interposing by injunction between public companies or trustees in cases of apprehended mischief or nuisance.

If the local authority injuriously affects the rights of any company or individual in respect of matters to which this section applies, without the requisite consent, the remedy is not by compensation, but by injunction or by action for damages. *Reg. v. Darlington Local Board*, *ante*, p. 405.

^(b) Note these words and compare the language of section 327, *ante*, p. 415. It is not easy to understand how any public company can properly give their consent to the local authority injuring their reservoirs or streams of water. They may indeed sell the interest of the company in the same for adequate compensation, but the section appears to go further, and enables consent to be given without sale. When properly considered, however, it will be seen that it only operates to protect the local authority, and leaves the board of directors or managers to settle with their own constituents whether they shall or shall not give their consent to the proceedings proposed.

Arbitration
as to altera-
tion of sewers
injuriously
affecting
supply of
water, &c.

333. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid^(a) whether any sewers, drains, culverts or pipes substituted under the powers of this Act^(b) for sewers, drains, culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply, quality or fall of water in any such reservoir, canal, river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this part of this Act provided.^(c) The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours and basins.^(d)

^(a) Reference is here made to section 331, *ante*, p. 419.

^(b) This is under the powers in section 331, *ante*, p. 419.

^(c) See section 328, *ante*, p. 417. The exact meaning of the words "at the option of the party complaining," is not obvious, as no alternative is stated. But the meaning appears to be that the complainant may bring an action, or if he chooses can compel a reference to arbitration.

^(d) See section 329, *ante*, p. 418.

Saving for
mines, &c.

334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same ; nor to the smelting of ores and minerals, nor to the calcining, puddling, and rolling of iron and other metals, nor to the

conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively. **Section 334.**

In *Re Dudley (Corporation of)*, 8 Q. B. D. 86, 96; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340, LINDLEY, L.J., said, referring to this section: "It is put that that section authorises the uncontrolled working of mines, and no doubt the first part of the section logically goes that length, and even further, for logically it prohibits the taking of mines by purchase; but when the second part of the section is considered, it is clear that the whole section applies to nuisances only." BRETT, L.J., added that he took the same view. It was held that the corresponding provisions of 18 & 19 Vict. c. 121, s. 44, prevented the application of that Act to manufacturers of the produce of ores and minerals, so that justices had no power to order the abatement of a smoke nuisance arising from a bichrome manufactory. *Norris v. Barnes*, L. R. 7 Q. B. 537; 41 L. J. M. C. 154; 26 L. T. (N.S.) 622; 20 W. R. 703. But observe that that Act excepted "the manufacturing of the produce of such ores and minerals" while the text does not. Further, the text excludes the operation of the Act only if its enforcement would interfere with the working of the mine. Therefore section 91 which provides for smoke nuisances was held to apply to the chimney of a coal mine, unless it could be shown that the smoke from it could not be prevented without interfering with the efficient working of the mine. *Patterson v. Chamber Colliery Company*, 56 J. P. 200; 8 T. L. R. 278.

The above section does not relieve the owners of mines, &c., from liability for a public nuisance in a suit brought by the Attorney-General for its abatement, nor from their ordinary common law liability to a person whose property is affected by it. *Attorney-General v. Logan* [1891], Q. B. 100; 65 L. T. (N.S.) 162; 55 J. P. 615; 7 T. L. R. 279.

With reference to the right to work mines or minerals under sanitary works reference must now be made to the Public Health (Support of Sewers) Act, 1883, *post*.

335. Any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, (a) shall apply in substitution for the last mentioned provisions. Saving for collegiate bodies and Government departments.

(a) These Acts are 28 & 29 Vict. c. 75, and 30 & 31 Vict. c. 113. See also 35 & 36 Vict. c. 79, s. 56.

336. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis), executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge or prejudicially affect any right, power, authority, jurisdiction or privilege of the Metropolitan Board of Works. Saving for Metropolitan Board of Works.

337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act, 1858, Amendment Act, 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district: (a) Saving for payment in certain cases to local authority.

Section 337. Provided that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

(a) See 24 & 25 Vict. c. 61, s. 8, which is in the following terms:—"Where already or hereafter any premises *not* being *within the limits* of the local board have a drain communicating, directly or indirectly, with a sewer *within the district*, and maintained by the local board, and any sewage flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or failing agreement between them, as on the application of the local board is determined by two justices; and the yearly sum so agreed on or determined, shall be *private improvement expenses*, and shall be charged on the premises, and be paid and recoverable accordingly as if the premises were within the district." Then follows a proviso as in the text above. It will be remembered that section 28, *ante*, p. 60, provides for a similar payment in future.

Saving for
acts of autho-
rities under
certain local
Acts.
[Repealed by
46 & 47 Vict.
c. 39.]

338. *All rates, orders, acts, or things made, assessed, performed, or done before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act, 1872, or of this Act.*

This section has been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

Saving for
certain local
boards.

339. Nothing in this Act shall affect the composition of any local board constituted by any order in council or any provisional order made under the Public Health Act, 1848, (a) and confirmed by Parliament, or the qualification or number of members of any such board; but any such order in council, or order so confirmed, or the Act confirming any such last-mentioned order, may be repealed, altered, or amended in manner provided by this Act. (b)

(a) That is 11 & 12 Vict. c. 63. A similar restriction as to qualification was contained in section 312, *ante*, p. 409, in reference to boards under local Acts.

(b) See section 297, sub-section (5), *ante*, p. 391.

Saving for
proceedings
under local
Acts.

340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act proceedings may be instituted (a) at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

- (1.) That no person shall be punished for the same offence both under a local Act and this Act; and
- (2.) That the local authority shall not by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.

(a) That is, actions may be brought or informations laid under either Act, or under both. This section meets the decision in the case of *Parry v. Croydon Coal, Gas, and Coke Company*, 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568.

It is sometimes of considerable importance to determine whether a local authority are acting under this Act, or under a local Act. See *Burton v. Salford (Corporation of)*, *ante*, p. 164. This section shows that the Act was not intended to repeal previous local Acts. *Monmouth (Mayor of) v. Monmouth (Overseers, &c., of)*, 38 L. T. (N.S.) 612, 617.

Note to
Section 340.

Whether this clause provides for any proceedings other than actions or informations is doubtful. If the local Act is superseded by the transference of its powers to the urban sanitary authority, it is difficult to see how any such proceedings under the local Act can take place, except, indeed, where actions for penalties are open to common informers. In such cases it is to be remarked that whereas under this Act the consent of the Attorney-General may be necessary, this preliminary will probably not be required by the local Act.

341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law or custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Powers of
Act to be
cumulative.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

But if proceedings can be taken *under both*, how is the proviso to be met? One Act may impose a penalty for a nuisance; the other may impose a penalty and provide for the abatement of the nuisance, or may provide for abatement only. If proceedings be instituted under both, one penalty only is to be recovered, but the penalty may be recovered under one, and the abatement enforced under the other.

It will be seen that penalties are imposed by the Gas and Waterworks Facilities Act, *post*, for offences committed under that Act identical with those committed under this Act. In *Blake v. Mayor, &c., of Croydon*, 2 T. L. R. 336, the court held that by virtue of this section the power given to the clerk of the peace to tax bills under section 249, *ante*, did not prevent an order to tax by a Master of the High Court.

The effect of this Act, in making improvement commissioners under local Acts urban sanitary authorities, is to reconstitute them as new bodies under the Act, vesting in them as such new bodies the powers given by the local Acts as well as those given by the Public Health Act. "The newly created body is to exercise not only the functions that were exercised by that body before, in the same way as before, but also it is to exercise all the powers given by this Act besides."—Per WILLS, J., in *Lea v. Facey*, 17 Q. B. D. 139; 55 L. J. Q. B. 371; 50 J. P. 295.

Oxford.(a)

342. The local government district of Oxford shall be subject to the jurisdiction of a local board, consisting of the vice-chancellor of the university of Oxford and the mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the university of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly within the jurisdiction of the commissioners, for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof and the adjoining parish of Saint Clement, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

Constitution
of local board
of the Oxford
district.

After the passing of this Act, a district formed out of the rural sanitary districts of the city of Oxford, and the Abingdon union, to be termed the

Section 342. "Grandpont district," shall be defined by an order of the Local Government Board,^(b) and on a day to be mentioned in such order, the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the members for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk, and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

The fifteen members to be elected by the university shall be elected as follows: namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls; any member of the university being of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor in Medicine, or any superior degree of the university, shall be qualified to be elected; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time, and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now or may hereafter be chosen by them respectively, save that in the election of members the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote.

Except as above provided, nothing in this Act shall affect the provisions of any order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

(a) By a provisional order made under the Local Government Act, 1888, and confirmed by 52 Vict. c. xv., the city of Oxford was extended and made a county borough, and all powers, duties, &c., of the local board were transferred to the corporation as urban sanitary authority, the local board being abolished.

Repeal of Acts.

343. The Acts specified in the first and second parts of Schedule V. **Section 343.**
to this Act are hereby repealed to the extent in the third column in the Repeal of
said parts of that schedule mentioned, with the following qualification; Acts in
(that is to say,) Schedule V.

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect(a)—

- (a.) Anything duly done or suffered under any enactment hereby repealed;(b) or
- (b.) Any right or liability(c) acquired, accrued, or incurred under any enactment hereby repealed; or
- (c.) Any security given under any enactment hereby repealed; or
- (d.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (e.) Any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

(a) See section 326, *ante*, p. 414. And see the similar provision in the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(b) The 11 & 12 Vict. c. 63, s. 72, required certain notices to be given to the local board before the laying out, making, or building upon any new street. This provision was repealed by 21 & 22 Vict. c. 98, except (section 9) as to "proceedings, matters, and things respectively begun or made" under any section of the former Act:—Held, that where the proper notices had been given and plans lodged, this was a matter or thing *begun or made* within the last-mentioned section, although little or nothing appeared to have been done towards the formation of the streets of which notice had been given. *Felken v. Berridge*, 15 C. B. (N.S.) 257; 27 J. P. 776.

A notice was given by a local board of intention to make a rate under the Sanitary Acts, and the estimate was deposited, but before the notice expired this Act was passed. The local board, not being aware of the repeal, made a rate purporting to be made under the repealed Act. It was held that the notice was a thing done within this proviso, and that the reference to the repealed Act was immaterial. *Reg. v. West Riding JJ.*, 1 Q. B. D. 220; 45 L. J. M. C. 97; 35 L. T. (N.S.) 358; 40 J. P. 820.

(c) Where justices had made an order to abate a smoke nuisance, and prohibited its continuance under 18 & 19 Vict. c. 121, before the passing of this Act, it was held that the defendant thereby incurred a *liability* which was continued by this section, so as to be subject to a penalty for allowing the smoke to continue after the passing of this Act. *Barnes v. Eddleston*, 1 Ex. D. 102; 45 L. J. M. C. 162; 33 L. T. (N.S.) 822; 40 J. P. 663.

It has been asked whether when local boards have acquired powers of making sewers or obtaining supplies of water under provisional orders duly confirmed before the passing of this Act, but such powers had not been completely executed at that time, they are affected by the provisions of this Act applicable to such matters. The better opinion appears to be that they are not.

SCHEDULES.

SCHEDULE I.

RULES AS TO MEETINGS AND PROCEEDINGS.

(1.) *Rules applicable to Local Boards.*(a)

Schedule 1.

Part 1.

1. Every local board shall from time to time make regulations(b) with respect to the summoning, notice, place, management, and adjournment(c) of their meetings,(d) and generally with respect to the transaction and management of their business under this Act.

(a) It is provided by the Local Government Act, 1894, s. 59, *post*, that this schedule, so far as it is unrepealed, shall apply in the case of every urban district council other than a borough council, and every rural district council, as if such district council were a local board, except that the chairman of the council may be elected from outside the councillors. The schedule does not apply to municipal corporations, the meetings and proceedings of which are regulated by sections 198, 199, *ante*.

(b) 11 & 12 Vict. c. 63, s. 34, required every local board to make bye-laws for these subjects, and these bye-laws were required to be published and confirmed in the manner therein provided. This is now altered; the district council are to make regulations, but such regulations are not bye-laws, nor to be treated as such. The district council may cause them to be published as they think fit. See section 188, *ante*, p. 259.

In *Mayer v. Burslem Local Board*, 39 J. P. 437, a local board had made the following bye-law: "That no resolution of the local board be altered or rescinded unless one month's notice be given by the clerk to each member of the board, setting forth the proposed alteration, nor unless there be at least as many members of the board present at the meeting when such resolution was adopted." BLACKBURN, J., said that the last part of this bye-law might be invalid (see now rr. 2, 7, *post*), but that the first part was valid, and was a very salutary and competent bye-law.

(c) When a meeting is required to be summoned by notice, care must be taken to serve the notice on every member, as a default in this respect may render the meeting invalid. See *Dobson v. Fussey*, 7 Bing. 305. The general rule as to the adjournment of meetings is that notice of such adjournment is not requisite. *Kerr v. Wilkie*, 6 Jur. (N.S.) 382; 1 L. T. (N.S.) 501; 24 J. P. 211; *Wills v. Murray*, 4 Ex. 843; 19 L. J. Ex. 209. But a previous bye-law or a future regulation may make a difference in this respect, and must, therefore, be looked to.

(d) It has been decided that meetings of boards of guardians may be held in private, and in *Purcell v. Sowler*, 2 C. P. D. 215; 46 L. J. C. P. 308; 36 L. T. (N.S.) 416; 25 W. R. 362; 41 J. P. 789, COCKBURN, C.J., intimated that this was the proper course to take when matters affecting the conduct of a particular person were being discussed. In that case a meeting of a board of guardians was held, and the conduct of the medical officer, P., was discussed, several accusations of neglect of duty being made against him during the discussion. S., the proprietor of a newspaper, published a fair report of the proceedings, whereupon P. sued S. for libel. It was held that though the subject-matter was of public interest, yet as the accusations were made *ex parte*, there was no privilege to protect S., and hence he was liable. This decision appears to be applicable to meetings of district councils, to which the public need not be admitted.

The decision was discussed and explained in *Pittard v. Oliver* [1891], 1 Q. B. 474; 60 L. J. Q. B. 219; 63 L. T. (N.S.) 247; 54 J. P. 100. In that case, at a meeting of a board of guardians, of which the plaintiff had been the clerk, the defendant, a member of the board, in the course of a discussion concerning the plaintiff's accounts, made certain defamatory statements concerning the plaintiff without malice and *bonâ fide*, believing that what he said was true. In accordance with the regular custom of the board reporters were present at the meeting. It was held that the privilege which would have attached to the statements if made in the presence of guardians only was not taken away by the presence at the meeting of reporters or persons other than guardians. "The effect of what the court said in *Purcell v. Sowler* was, that though the occasion was privileged as regards the time

Schedule 1.

Part 1.

and place at which the words were spoken, and as regards the person who spoke them, yet the matter was not one of public interest, and therefore the publication in the newspaper was not privileged. *COCKBURN, C.J.*, seems to have suggested that it would have been better if reporters had not been present when the words were spoken; but he did not suggest that it was illegal for them to be there or that their presence took away the privilege." On the same subject reference may be made to *Royal Aquarium Summer and Winter Garden Society, Limited v. Parkinson* [1892], 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 513; 40 W. R. 450; 56 J. P. 404; 8 T. L. R. 352, where it was held that a county councillor making defamatory remarks at a meeting of the council is not entitled to absolute immunity in respect of such statement; but is entitled only to the ordinary privilege which applies to a communication made without express malice on a privileged occasion. See also *Botterill v. Halse*, "Times," 25th June, 1895.

As to the removal of a disorderly member or stranger, reference may be made to *Doyle v. Falconer*, L. R. 1 P. C. 328; *Dobson v. Fussey*, 7 Bing. 305.

As to the power of motion incident to every corporation as such, see *Booth v. Arnold* [1895], 1 Q. B. 571; 64 L. J. Q. B. 443; 72 L. T. (N.S.) 310; 43 W. R. 360; 59 J. P. 215; 11 T. L. R. 246.

2. No business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

The regulations generally provide for the action of the clerk in case a quorum do not attend. The usual regulation requires the clerk to make due notice of any failure of the meeting in the minutes.

Several members of a local board, consisting of nine members, resigned, so that the quorum required by this rule was not left. The two remaining members proceeded to fill up the vacancies. The board, as thus constituted, prescribed a building line under section 155. It was held by the Court of Appeal that the filling up of the vacancies was "business" within the meaning of this rule, that the two members were not competent to transact it, and that the new members, therefore, were not duly elected, but that by rule 9, *post*, the objection to the building line, founded on the fact that some of the members of the board were not duly elected, was removed. *Newhaven Local Board v. Newhaven School Board*, 30 Ch. D. 350; 53 L. T. (N.S.) 571; 34 W. R. 172.

3. Every local board shall from time to time at their annual meeting^(a) appoint one of their number^(b) to be chairman for one year at all meetings at which he is present.

(a) The annual meeting is held as soon as convenient after the 15th April in each year. See rule 11, *post*. The year for which the chairman is to act must be that following his election, which will, as it seems, enable him to act until the meeting next ensuing the annual election in the following year. It would seem, therefore, that he will be entitled to preside at the next annual meeting at least until his successor is appointed.

(b) The chairman of a district council other than a borough council can now be elected from outside the councillors. See Local Government Act, 1894, s. 59, *post*.

And as to the power of the council to elect a vice-chairman, see the same section.

4. If the chairman so appointed dies, resigns, or becomes incapable of acting,^(a) another member shall^(b) be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer.

(a) If the chairman becomes disqualified to act as a member, he will become incapable of acting within these words. Sickness may also produce incapacity.

(b) This is imperative, and, therefore, it is the duty of the board to fill up the vacancy.

5. If the chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat.

If the chairman arrive after the commencement of business, it is the usual course to allow him to take the chair.

6. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

The concluding words of this rule are new, and prevent the votes from being given by ballot. The provision as to the recording of the names appears to be directory, so that any omission in this respect will not affect the validity of the vote.

- Schedule 1.** **7.** Every question at a meeting shall be decided by a majority of votes of the members present and voting on that question.
- Part 1.**

The words "voting on that question" are new, and remove the difficulty which has been expressed in cases when some of the members present do not vote on the question, but do not leave the room. As to what amounts to voting on the question, see *Ex parte Orde*, L. R. 6 Ch. 881.

See also *Mayer v. Burslem Local Board*, ante, p. 426, as to the number of members who must vote in order to rescind a resolution.

- 8.** In case of an equal division of votes the chairman shall have a second or casting vote.

If the chairman has voted and there is an equality of votes, he may vote again and decide the question, or, if not having voted, he counts the votes and finds them equal, he may then vote and decide the question.

- 9.** The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election, or selection, or qualification of any members thereof.

This is similar to the provision in 5 & 6 Vict. c. 57, s. 12, in regard to boards of guardians. That section was merely declaratory of a decision of the Exchequer Chamber in *Reg. v. Todmorden and Warden (Overseers of)*, 1 Q. B. 185; 3 Q. B. 675.

See *Newhaven Local Board v. Newhaven School Board*, cited in the notes to rule 2, ante, p. 427.

- 10.** Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place, or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; (a) and, until the contrary is proved, (b) every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

(a) In a case to which a local board were parties, the Court of Chancery ordered the minute book of the board to be sent up to London for inspection by the other side. *Attorney-General v. Whitwood Local Board*, 40 L. J. Ch. 592; 19 W. R. 1107.

It is common in bye-laws and regulations to provide that the minutes of a meeting shall be read and confirmed at the ensuing meeting. Lord CAMPBELL, C.J., in *Reg. v. York (Mayor of)*, 1 E. & B. 594, says that "public bodies confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate."

See, as to the evidence of minutes, *Inglis v. Great Northern Railway Company*, 16 Jur. 895; *Miles v. Bough*, 3 Q. B. 845; 12 L. J. Q. B. 74; *Sheffield, &c., Railway Company v. Woodcock*, 7 M. & W. 574. Notwithstanding the provisions in the text as to the signing at the meeting, or at the next ensuing meeting, it seems that it is not a condition precedent to the admissibility of the minute, provided it has been signed at a subsequent time by the person who actually presided as chairman at either meeting. See *Southampton Dock Company v. Richards*, 1 M. & G. 448. And it would also seem that it is sufficient if the minutes of the adjourned meetings are signed. *Inglis v. Great Northern Railway Company*, 1 Macq. Sc. H. L. Cas. 112.

(b) Note that the minutes are only to be *prima facie* evidence of regularity; but as this force is given to them, great care is required as to the keeping of them.

- 11.** The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year.

This is a new provision. By 11 & 12 Vict. c. 63, s. 34, an annual meeting was required, but it was left to the local board to fix the time. 37 & 38 Vict. c. 89, s. 27, required it to be as soon as convenient after the annual election. In the text it is fixed to be after the 15th of April.

Schedule 1.
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12. The first meeting of a local board for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

The same person may be chairman of the meeting and for the year. In a case where the chairman's year of office under this section expired before the 15th of April, a chairman should be appointed for the residue of the term.

13. Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore.

This is no longer applicable. See the note to section 342, *ante*, p. 424.

(2.) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs and to Joint Boards.*

1. A [*committee or*] joint board may meet and adjourn as it thinks proper.

See sections 200—204, *ante*, pp. 272—274, as to committees, and sections 280—282, *ante*, p. 380, as to joint boards. As regards committees, attention must be paid to the provisions contained in these sections applicable to them and their powers.

So much of this schedule as relates to committees is repealed by section 89 of the Local Government Act, 1894, *post*. See now section 56 of that Act, *post*, as to committees.

2. The quorum of a [*committee or*] joint board shall consist of such number of members as may be prescribed by the authority that appointed the committee or joint board, or, if no number is prescribed, of three members.

3. A [*committee or*] joint board may appoint a chairman of its meetings.

It is intended that this chairman is to be appointed for the term of the committee's or joint board's existence, or, at least, so long a time as he shall be qualified to act as member.

4. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

See note on Part (1), rule 5, *supra*.

5. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.

See note on Part (1), rule 7, *supra*.

6. In case of an equal division of votes the chairman shall have a second or casting vote.

See note on Part (1), rule 8, *supra*.

7. The proceedings of a [*committee or*] joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such [*committee or*] joint board, or of any member thereof.

See note on Part (1), rule 9, *supra*.

8. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the

Schedule 1. meeting at which such proceedings took place, or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings ; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

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See the notes on Part (1), rule 10, *supra*.

SCHEDULE II.

(I.) RULES FOR ELECTION OF LOCAL BOARDS.(a)

(a) This schedule is wholly repealed by the Local Government Act, 1894, *post*, but inasmuch as it is incorporated to some extent by Schedule III., rule 6, *post*, it is still necessary to retain the following rules :—

- * * * * *
8. No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.
9. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not reside.

Qualification of Electors, Scale of Voting, and Register of Owners.

10. The word “owner,” when used in relation to the right of voting at any election of a local board,(a) shall mean any person(b) for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rackrent,(b) or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rackrent(b) of any such property.
- (a) It will be remembered that there is another definition of owner in section 4, *ante*, p. 6.
- (b) The words person and rackrent are defined in section 4, *ante*, pp. 6, 11. See also rule 11, note (a), *post*. Note that the word *owner means* and not merely *includes* the persons named. Hence, there may be persons who are owners in the ordinary sense, yet are not owners within the meaning of this definition. For example, the owner of land let at a ground rent is not in occupation, nor does he receive the rackrent. Again, a trustee appears to be excluded from the definition as he does not receive the rent on his own account.

11. A person(a) shall not be deemed a ratepayer(b) or be entitled to vote as such at any such election unless he has been rated(c) to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid(d) all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this

Act, except rates which have been made(e) or become due within the six months Schedule 2. immediately preceding.(f)

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(a) According to the definition of *person* in section 4, *ante*, p. 6, this word would include a corporation aggregate, but the general law relating to elections prevents such a corporation from voting. 30 & 31 Vict. c. 106, s. 10, provides a mode by which a corporation may vote as ratepayers through an officer nominated on their behalf, and that section may be considered as applicable to elections under this Act. It will be seen from rule 15, *post*, that corporations who are owners can appoint proxies to vote for them in that capacity.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), in all statutes the masculine gender includes the feminine; and as there is nothing at common law to prevent a woman from voting (see *Olive v. Ingram*, 2 Stra. 114), an unmarried woman if duly qualified may vote. But a married woman cannot vote, and it was said by the court that the Married Women's Property Act had no reference to political or municipal rights. *Reg. v. Harrauld*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N.S.) 616; 20 W. R. 328; 36 J. P. 438.

Bankruptcy does not disqualify if the voter continues to be rated and has paid the rate.

Persons in receipt of relief are disqualified from voting at elections to certain offices by 39 & 40 Vict. c. 61, s. 14. But the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), provides that when a person has received for himself or for any member of his family any "medical or surgical assistance, or any medicine at the expense of any poor rate, such person shall not by reason thereof be deprived of any right to be registered, or to vote as a voter, at any election to certain offices, including the office of member of a local board." The term "medical and surgical assistance" is defined to mean all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate. Several cases have been decided upon these statutes and the somewhat similar provisions of 2 Will. 4, c. 45, s. 36. The appellant having applied to the guardians, for work, was employed by them, by way of relief, in breaking stones, and paid out of the parochial funds, the amount paid to him being much greater than the value of his work to the guardians. It was held that he had received "parochial relief or other alms" within 2 Will. 4, c. 26, so as to disqualify him from voting. *Magarrill v. Whitehaven (Overseers of)*, 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. (N.S.) 667; 34 W. R. 279; 49 J. P. 743. By the provisions of a charity, regulated by a scheme of the Charity Commissioners, a certain number of the poor inhabitants of a borough, who had not been for two years in receipt of parish relief, were received into an almshouse where certain weekly payments and other benefits were bestowed on them. They were liable to be removed for misconduct and other causes. It was held (following *Harrison v. Carter*, 2 C. P. D. 26; 46 L. J. C. P. 27; 35 L. T. (N.S.) 511; 25 W. R. 182), that they were disqualified from voting, having received alms within 2 Will. 4, c. 45, s. 36. *Baker v. Monmouth (Town Clerk of)*, 53 L. T. (N.S.) 668; 34 W. R. 64; 49 J. P. 776. The wife of the appellant, being near her confinement, applied to the relieving officer of the union for an order for the attendance of a medical man. The guardians authorised the relieving officer to give her an order for such attendance, but she was, in fact, attended during her confinement by an uncertificated midwife, who was sent to her, and paid by the relieving officer. It was held that the relief afforded to his wife was "medical assistance" within 48 & 49 Vict. c. 46, s. 2, and that the appellant was not disqualified from being registered as a voter. *Honeybone v. Hambridge*, 18 Q. B. D. 418; 56 L. J. Q. B. 46; 51 J. P. 103; 56 L. T. (N.S.) 365; 35 W. R. 520. A charity was regulated by Act of Parliament, which provided that the inhabitants of certain almshouses should be persons who, from age, ill-health, accident, or infirmity, should be unable to maintain themselves. It was held that the occupation of an almshouse, and the receipt of a weekly sum out of the funds of the charity, amounted to a receipt of alms under 2 & 3 Will. 4, c. 45, s. 36. *Edwards v. Lloyd*, 20 Q. B. D. 302; 57 L. J. Q. B. 121; 58 L. T. (N.S.) 409; 52 J. P. 519. See also *Daniels v. Allard*, 1 Fox, 70; W. N. (1887) 222. But the receipt of relief by the parent of a voter does not disqualify the voter, though he is legally liable to maintain the parent. *Doherty v. Chambers*, 22 L. R. Ir. 434. On the other hand, relief to a wife, or a child under 16, would be relief to the husband or father, under 4 & 5 Will. 4, c. 76, s. 56.

The common law disqualification of persons who are aliens, infants, or lunatics, will apply to the ratepayer.

By 33 & 34 Vict. c. 23, s. 2, a person convicted of felony is disqualified from exercising any right of suffrage, unless he shall be pardoned under the great seal, or shall have suffered the sentence inflicted upon him. The Corrupt Practices Act, 1883, and the Municipal Elections (Corrupt Practices) Act, 1884, *post*, disqualify persons convicted of offences under those Acts for periods depending upon the offence of which the voter has been convicted.

Where the owner was rated in the place of the occupier under 13 & 14 Vict. c. 99, the occupier was held not to be a ratepayer competent to vote. *Richardson v. Gladwin*, E. B. & E. 138; 27 L. J. M. C. 193; 26 J. P. 688. But now by 32 & 33 Vict. c. 41, s. 19, the name of every occupier is to be entered in the rate book, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the

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occupier, and the occupier shall be deemed to be duly rated for any qualification or franchise depending upon rating, and the occupier whose name shall have been omitted, shall, notwithstanding such omission, and though no claim be made, be entitled to such qualification and franchise. The Court of Common Pleas decided that this section did not operate universally, but only in the cases provided for by sections 3 and 4 of the Act. *Cross v. Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 53; 23 L. T. (N.S.) 589; 19 W. R. 131; 35 J. P. 153. But the Court of Queen's Bench, in a later case, differed from this view, and held that this section was of general application. *Smith v. Seghill (Overseers of)*, L. R. 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T. (N.S.) 859; 23 W. R. 745; 40 J. P. 228. And see *Barton v. Birmingham (Town Clerk of)*, 48 L. J. C. P. 87; 39 L. T. (N.S.) 352; 43 J. P. 24; *St. Peter's, Cornhill, re*, 2 T. L. R. 870. Reference has been made in the course of this work (*ante*, p. 107) to the distinction between lodgers and occupiers. The latter will in most cases be qualified to vote when the rates are paid by the owner.

An owner who is rated and pays the poor rates under the Act just referred to is entitled to vote as a *ratepayer* under this Act. *Reg. v. Hampton*, 6 B. & S. 923; 13 L. T. (N.S.) 431; 12 Jur. 583; 30 J. P. 246. And see also *Richardson v. Gladwin, supra*; *Reg. v. Kirby*, 31 L. J. Q. B. 3; 29 J. P. 196; *Lambe v. Grieves*, 8 Jur. (N.S.) 288; *Powell v. Jones*, 18 C. B. (N.S.) 83; 11 Jur. (N.S.) 17; 11 L. T. (N.S.) 600; 13 W. R. 273; 29 J. P. 583. But this apparently applies only to an owner who is *rated* under 32 & 33 Vict. c. 41, s. 4, not when the owner agrees to pay the rates under section 3. See *Mogg v. Clark*, 16 Q. B. D. 79; 55 L. J. Q. B. 69; 53 L. T. (N.S.) 890; 34 W. R. 66; 50 J. P. 342.

(c) The rate must have been a valid rate. It must have been duly allowed and published, and be legal in other respects. Note that the provision as to *rating* applies only to the *poor rate*, not to rates made under this Act, though these must be paid to complete the qualification.

(d) 32 & 33 Vict. c. 41, s. 15, enables a poor rate to be made payable by instalments, and makes payment of each instalment available in respect of any qualification or franchise *pro tanto*, while section 7 renders payment of the poor rate by the owner available as a payment by the occupier in full for the purpose of any qualification or franchise, which, as regards rating, depends upon the payment of the poor rate, notwithstanding any allowance or deduction made to the owner.

(e) A poor rate is now to be deemed to be made on the day when it is allowed by the justices: 32 & 33 Vict. c. 41, s. 17.

(f) It is presumed that if the rate has been made payable by instalments, payment of such instalments, as they become due, will satisfy this enactment.

Where the occupiers of small properties are not rated to the district rate, the provisions contained in 32 & 33 Vict. c. 41, which relate to the poor rate, will not apply, but as they are not rated, it is submitted that they cannot be in default, and that, therefore, they are entitled to vote.

12. Owners of and ratepayers in respect of property situated within the district for which the election is held shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person(a) is entitled to vote is rated to the poor rate on a rateable value(b) of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds, and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds, and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds, and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds, and is less than two hundred and fifty pounds, he shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes.

(a) As this scale applies to owners as well as to ratepayers, this word includes a corporation aggregate. See rule 11, note (a), *ante*.

(b) This means *net annual value* as defined in section 4, *ante*, p. 11, and not the gross estimated rental. See note (g) to Schedule II., rule 3, *ante*, p. 431.

13. Any person(a) who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation.

(a) See rules 16 and 17, *post*.

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14. Owners(a) may give their votes either personally or by proxy.

(a) This word is used generally, and extends the provisions of the former Acts, in which the right of voting by proxy was given only to corporations aggregate, joint stock companies, or bodies of proprietors or undertakers.

15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons ; and every such instrument shall be attested by a witness, and may be in the Form M. in Schedule IV. to this Act.

The Commissioners of Inland Revenue have advised that this appointment requires a stamp of 10s. (see the Stamp Act, 1891 (54 & 55 Vict. c. 39), Proxy, Letter of Attorney (6)) ; and their advice is supported by *R. v. Kelk*, 12 A. & E. 559. An adhesive stamp must be used and cancelled.

The appointment of a proxy by a corporation must be under seal.

No qualification of any kind is required by a proxy, and he may be appointed by any number of owners. His appointment may be limited to the particular occasion, or it may be general, in which case it will continue until revoked, or so long as the appointing owner retains the property.

16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons.

It has already been pointed out that the corporation cannot vote individually as *ratepayers*. See the note to rule 10, *ante*.

17. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

* * * * *

20. A claim(a) by an owner or proxy to be entered on the register shall state his name and address(b) within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid ; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy, or an attested copy thereof.(c)

(a) There is no reason for supposing that this claim requires a stamp.

(b) An *address* is a place to which reference may be made or a letter may be directed. It need not be a *residence*, or even a *place of business* ; but note that it must be within the district.

(c) These requisitions are similar to those in the case of the election of guardians.

21. A claim by an owner or proxy may be made by writing in the Form L. in Schedule IV. to this Act.

* * * * *

36.(a) The returning officer shall [after the close of the revision of the register], but not less than fourteen days before the last day appointed for delivery to him of nomination papers, publish a notice signed by him, and specifying—

[The number and qualification of the persons to be elected ;

The place where the nomination papers hereinafter mentioned are to be delivered or sent to him.

The last day on which they are to be delivered or sent in] ;

Schedule 2. The mode of voting [*in case of a contest*];

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The place for the examination and for the casting up of the votes; and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed.(b)

(a) This rule, except in so far as it is printed in italics, is incorporated by Schedule III., Rule 6, *post*.

(b) The parochial notices are probably the notices of vestry, &c., which are affixed according to 1 Vict. c. 45, on the doors of all churches and chapels within the district. The notice must be affixed to the principal door of every church or chapel, however recently built; but this applies only to churches and chapels of the Established Church, not to churches where Divine service has ceased to be celebrated nor to places other than churches or chapels in which Divine service is celebrated, nor to dissenting chapels. *Ormerod v. Chadwick*, 16 M. & W. 367; 17 L. J. M. C. 143; 11 J. P. 138; *Ex parte Warburton*, 18 Jur. 494; *Reg. v. Whipp*, 4 Q. B. 141; 7 Jur. 194; 12 L. J. M. C. 64; *Edwards v. Hatton*, L. R. 1 A. & E. 21. A notice need not, under 1 Vict. c. 45, be published on the doors of dissenting chapels, but only on those of the Established Church; and where there are two outer gates in the churchyard, near one of which a notice board is put, the publication is good if the notice is put on one of the outer gates. *Empson v. Metropolitan Board of Works*, 25 J. P. 677.

37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

38. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the election is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer.(a) Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds.(b)

(a) The clerk or overseer is not authorised to charge for the inspection, but he is not required to attend the returning officer with any document, and therefore if the latter desire such attendance he must be prepared to pay for it. Note that this rule does not authorise the taking of the books out of the custody of the officers having the legal charge of them.

(b) See as to the recovery of this penalty, section 251, *ante*, p. 333.

* * * * *

44. The returning officer shall three days at least(a) before the day of collection of the voting papers cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address(b) stated in the [*register or*] claim of each owner and proxy, and at the residence(c) within the district of each ratepayer entitled to vote therein.

(a) These days are to be both exclusive. See *Zouch v. Empsey*, 4 B. & Ald. 522; *Reg. v. JJ. of Salop*, 8 A. & E. 173; 7 L. J. M. C. 56.

(b) See rule 20, *ante*, p. 433.

(c) There is here an addition to the provision in 11 & 12 Vict. c. 63, s. 24, as the residence of the ratepayer at which the delivery is to be made must be within the district. Delivery need not be made out of the district, but an elector whose residence is without the district may vote if he proceed according to the provisions of rule 49, *post*.

45. Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper.

If a greater number be marked than the number to be elected, the vote will fail for uncertainty.

In *Reg. v. Strachan*, L. R. 7 Q. B. 463 ; 41 L. J. Q. B. 210 ; 26 L. T. (N.S.) 835 ; 30 W. R. 629 ; 36 J. P. 727, it was held that 33 & 34 Vict. c. 97, s. 102, as to the stamp on a voting paper, did not apply to such papers at municipal elections. Hence it may be considered that it does not apply to the voting papers in these elections. Schedule 2,
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The voter is here required only to sign the voting paper, and there is no place for his address in the form given in the schedule ; but the directions here appended require him to state his address. It is probably sufficient to sign according to the requisition in the text.

As no voting paper should be sent to a firm, so the signature of a firm is insufficient.

A person who cannot write may mark his paper in the manner provided by rule 47, *post*.

The text makes no provision for signature by an agent. See, as to the fabrication of voting papers, rule 69, *post*.

46. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

The same remarks apply here as have been already made upon the preceding rule.

47. Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

There is a discrepancy between this rule and the "directions for voting" appended to Form O. in Schedule IV. By this rule the voter is to affix his mark at the foot of the paper, and the witness is then to sign his name against the mark and to write the initials of the voter against the names of the candidates voted for. By the directions for voting the voter is to make his mark instead of initials.

48. The returning officer shall cause the voting papers to be collected on the day of collection (*which shall not be later than the seventh of April*) by such persons as he may appoint.

See the provision in rule 66, *post*, as to Sunday and other special days.

49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, (a) nor unless the same is collected by the persons appointed for that purpose : Provided—

(a.) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, (b) he shall, on personal (c) application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him :

(b.) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, (d) the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes. (e)

(a) That is *reddendo singula singulis*, to the address of the owner and to the residence of the ratepayer. See rule 9, *ante*, p. 430, as to the residence of the ratepayer in a ward.

(b) This may happen if a ratepayer residing out of the district has not received a voting paper, or if an owner having no address in the district has not received one, or if the distributor has negligently or accidentally omitted to serve one on a person within the district. If a voting paper has been duly left, and has been lost or accidentally destroyed, the case does not appear to be within this proviso. If a paper, which has been left is defective, probably this is equivalent to there having been no paper delivered.

(c) Note the introduction of this word. The voter must apply in person.

(d) The default of the voter himself, whether accidental or negligent, gives him no right under this proviso.

Schedule 2. (c) Note that under the first proviso application must be made before the day of collection. Under the second the paper may be delivered before twelve o'clock on the day appointed for casting up the votes.

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Counting of Votes.

51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed(a) for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit : he shall cast up such of the votes as he finds to be valid, and to have been duly given, collected, or received, and shall ascertain the number of such votes [for each candidate](b)

(a) The corresponding provision in 11 & 12 Vict. c. 63, s. 27, was held by Lord CAMPBELL, C.J., in *Reg. v. Cross*, 19 L. T. (o.s.) 36 ; 16 J. P. 215, to be merely directory. He held also that the casting up at the clerk's room, which was away from the board room, was valid. Note, however, that the place appointed must now be stated in the notice of election. See rule 36, ante, p. 433 ; and see also rule 50, ante, which provides for the delivery of certain voting papers at the place appointed. *Quare*, therefore, if the provision in the text would now be held to be directory only.

(b) The returning officer may at this time correct any error which he may have made in filling in the number of votes assigned to the voter.

* * * * *

53. The returning officer shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify such list, and shall deliver the same, together with the nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

54. Such list shall during office hours be open to public inspection, together with all other documents relating to the election, for six months after the election, without fee or reward ; and the returning officer shall, as soon as may be after the completion of the election, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the election has taken place.

Rules 53 and 54 may apply to a poll under Schedule III., so far as regards the signing and delivery of the list of votes, the deposit of the voting papers and their inspection. As to publication of the result, see Schedule III., rule 7.

* * * * *

General Provisions.

66. Whenever the day appointed for the performance of any act in relation to any election is a Sunday, Christmas Day, or Good Friday, a Bank holiday,(a) or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid ; and in that case on the day following such excluded day.

(a) These are provided for in 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13. They are Easter Monday, Monday in Whitsun week, the first Monday in August, the 26th December, if a week day, and if not, the 27th December.

* * * * *

68. If the returning officer refuses or neglects(a) to comply with any of the provisions of this schedule [relating to elections], he shall be liable to a penalty not exceeding fifty pounds;(b) and any person employed [for the purposes of any such election] by or under the returning officer who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds.(b)

Schedule 2.

Part 1.

(a) This penalty is incurred by mere neglect, without showing that it was wilful or corrupt. See *King v. Burrell*, 12 A. & E. 460; 9 L. J. Q. B. 337; *Hunt v. Hibbs*, 5 H. & N. 123; 29 L. J. Ex. 222; 24 Jur. 78; 8 W. R. 238; 24 J. P. 118. In *Reg. v. Loft-house*, L. R. 1 Q. B. 433; 35 L. J. Q. B. 141; 14 L. T. (N.S.) 351; 14 W. R. 649; 30 J. P. 453; 7 B. & S. 447, it was stated that erroneous entries in the voting papers might subject the returning officer to a penalty. If the chairman, knowing a voter to be qualified, maliciously refuses to receive his voting paper, he will be liable to an action at the suit of the voter; but if he rejects the vote *bonâ fide* believing the voter not to be qualified, he is not liable, though his belief may be erroneous. *Tozer v. Child*, 6 E. & B. 289; 2 Jur. (N.S.) 928; 26 L. J. Q. B. 151; 21 J. P. 516. It has been held with respect to the duties of a returning officer under the Ballot Act, 1872, that when such duties are ministerial only, an action for the breach of them will lie at the suit of a party aggrieved, who has thereby lost the election, without malice or want of reasonable care on the part of the defendant. *Pickering v. James*, L. R. 8 C. P. 489; 42 L. J. C. P. 217; 29 L. T. (N.S.) 210; 21 W. R. 786; 37 J. P. 679.

(b) See, as to the recovery of these penalties, section 251, *ante*, p. 333. See also section 253, *ante*, p. 336, as to the persons who may institute proceedings to recover the penalties. A chairman of a local board was charged with neglecting to deliver the voting papers to the local board (see rule 53, *ante*, p. 436), and L. was the prosecutor, who, though a member of the board, had not been a candidate at the election, and the persons returned at such election were properly elected. L. had not obtained the consent of the Attorney-General or of the local board to prosecute. (See section 253, *ante*, p. 336.) It was held that as L. was not a party aggrieved, the justices had no jurisdiction to hear and determine the information. *Reg. v. Blanshard*, 30 J. P. 280.

69. Any person who(a)—

Fabricates(b) in whole or in part, or alters, defaces, destroys, abstracts, or purloins any voting paper, or

Personates any person entitled to vote [at any election](c) or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote,(d) or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfully authorised so to do.

shall be liable to a penalty not exceeding twenty pounds,(e) or, in the discretion of the court, to imprisonment with or without hard labour for any period not exceeding three months.

(a) This section is taken from 14 & 15 Vict. c. 105, s. 3, with reference to the election of guardians, though the language is slightly altered. It is well to state that several prosecutions have taken place upon that section, and that persons have been convicted of offences under it. At the Spring Assizes for Yorkshire in 1858 three persons were convicted before BYLES, J., of a common law offence for conspiring to defeat the due election of guardians by causing forged proxy appointments to be issued and acted upon at such election, and were sentenced to imprisonment. *Reg. v. Beckwith and Others*. The offences mentioned in this section are to be deemed illegal practices within the meaning of the Municipal Corporations (Corrupt Practices) Act, 1884, *post*, but without prejudice to the punishment under this rule of persons guilty of such offences. 47 & 48 Vict. c. 70, s. 36.

(b) At an election of guardians a voter's wife told W. that she had authority from her husband to fill up his voting paper, and W. thereupon caused her to put her mark on the voting paper, he putting the voter's initials opposite to the candidate's name and attesting the paper, which was received as if duly marked, &c., by the voter himself. W., having been convicted under 14 & 15 Vict. c. 105, s. 3, of unlawfully fabricating a voting paper, it was held that there was no evidence to justify the conviction. *Wickham v. Phillips*, 47 J. P. 612. And see the cases cited in note (d), *infra*.

(c) When the person who should have been so entitled is dead, and he is personated

Schedule 2. at the election, the case is not provided for by this section. *Whiteley v. Chappell*, L. R. 4 Q. B. 147; 38 L. J. M. C. 51; 17 W. R. 175; 19 L. T. (N.S.) 355; 33 J. P. 244.

Part 1.

(d) Where a person signed the name of a voter to a paper with the consent of the voter's wife, but without his knowledge, and believing that he might do so, it was held that he was not liable to a penalty under the corresponding enactment in 21 & 22 Vict. c. 98, s. 13. *Aberdare Local Board v. Hammett*, L. R. 10 Q. B. 162; 44 L. J. M. C. 49; 32 L. T. (N.S.) 20; 39 J. P. 69.

The appellant was charged with unlawfully assuming to act for one H., a voter in an election of guardians. The appellant went to the voter's house, and the mother and brother of the voter having told him that the paper was not filled up, he offered to fill it up, and then put in a candidate's name without asking them which candidate. The paper was afterwards counted for that candidate. It was held that, though there might have been evidence to convict of fabricating a voting paper, the appellant was wrongly convicted of assuming to act, as it was not proved that H. did not afterwards agree to the filling up of the paper. *Bell v. Morson*, 40 L. T. (N.S.) 128; 43 J. P. 174.

The respondent, a candidate at an election of members of a local board, called at the house of a voter to whom a voting paper had been sent, and asked her how she intended to vote and to hand him the voting paper, which she did. He then inquired if she knew how to fill it up, and she replied in the affirmative. The respondent thereupon, without any authority, express or implied, from the voter, wrote in pencil the initials of the voter against his own name. The voter objected to his doing so. The respondent left the voting paper with the voter, with her initials so written by him against his own name, but with no other mark upon it. The voter subsequently struck out the initials so written by the respondent, and placed her initials against the names of three other candidates, and signed her own name to the voting paper. It was found that the respondent so pencilled the initials of the voter with the intent of indicating on her behalf that she intended to vote for him, and of inducing and procuring her to vote for him. The respondent was successful at the poll. A petition was lodged against his return on the ground of illegal practices (*inter alia*) of fabricating in whole or in part a voting paper, and of falsely assuming to act in the name or on behalf of a voter:—Held, that the act of the respondent did not amount to a fabrication in whole or in part of the voting paper, nor to falsely assuming to act in the name or on the behalf of the voter within the meaning of rule 69 of Schedule II., Part 1, of the Public Health Act, 1875. *Re The Election Petition from the Knighton Local Government District*; *Gough v. Murdoch*, 57 L. T. 308; 35 W. R. 836; 51 J. P. 471.

(e) See, as to the recovery of the penalty, section 251. Note that a candidate at an election is a party aggrieved by the mere fabrication of a voting paper, so as to be entitled to lay an information under this rule without the consent of the Attorney-General under section 253, *ante*, p. 336. *Verdin v. Wray*, 2 Q. B. D. 608; 46 L. J. M. C. 170; 35 L. T. (N.S.) 942; 25 W. R. 274; 41 J. P. 484.

* * * * *

SCHEDULE III.

Rules as to Resolutions of Owners and Ratepayers.(a)

1. For the purpose of passing a resolution of owners(b) and ratepayers under this Act,(c) a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners,(d) resident in the district or place with respect to which the resolution is to be passed.

(a) Such a resolution is required under sections 166, 216, 272; also under the Highway Rate Assessment and Expenditure Act, 1882 (45 & 46 Vict. c. 27), s. 9, which provides for parts of parishes excluded from urban districts, and enables the owners and ratepayers to decide that such part shall be highway parishes.

(b) See the definition of *owner* and *ratepayer* in Schedule II., rules 10, 11.

(c) These words appear to restrict the rules of this schedule to meetings under this Act. But this Act is, according to section 313, *ante*, p. 410, to be read into any other previous Act which refers to any of the Sanitary Acts. Hence the rules will apply to the Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), printed in the Appendix.

(d) There must be twenty persons made up of ratepayers and owners indiscriminately. See section 273, *ante*, p. 375.

Schedule 3.
Part 1.

2. The summoning officer of such meeting shall be—

In boroughs, the mayor ;

In improvement Act districts, the chairman of the improvement commissioners ;

In local government districts, the chairman of the local board ; (aa)

In places situated in any rural district or districts and having known and defined boundaries,(a) the churchwardens(b) or one of them having jurisdiction co-extensive with the place ; or if there are no churchwardens, the overseers or one of them having the like jurisdiction ; or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by order of the Local Government Board,(a) the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room.(c)

(aa) Improvement Act Districts and Local Government Districts are now known as urban districts. See the Local Government Act, 1894, s. 21, *post*.

(a) See section 272, *ante*, p. 373, and the notes thereon.

(b) It is presumed that the word churchwardens will include *chapelwardens* where the place is a chapelry. But it is very doubtful whether the churchwardens of a *parish* can act for a part of that parish, such as a township. The churchwardens of an ecclesiastical district formed under 6 & 7 Vict. c. 57, are included in the term. *Reg. v. Northowram and Clayton*, L. R. 1 Q. B. 110 ; 7 B. & S. 110 ; 35 L. J. Q. B. 90 ; 30 J. P. 181.

(c) To obtain this appointment there must be a communication in writing to the board, who must be satisfied of the inability or refusal of the proper officer to perform the duties. When one of these officers is a candidate he should refuse to act, as he cannot return himself.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed,(a) of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat ; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or in case of dispute, by a court of summary jurisdiction.(b)

(a) Provision is made in rule (8), *post*, for the costs when the resolution is passed.

(b) See the definition in section 4, *ante*, p. 22.

4. The summoning officer shall, on such requisition as aforesaid,(a) fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place ;

By causing such notice to be affixed to the principal doors of every church and chapel(b) in the place to which notices are usually affixed.

(a) This officer must satisfy himself of the sufficiency and legality of the requisition. It is to be noticed that he has absolute discretion as to the time and place of meeting.

(b) The church and chapel must mean, according to the interpretation of similar words in 1 Vict. c. 45, church and chapel of the Established Church. See note on Schedule II., rule 36, *ante*, p. 434. Note that the mode of publication is here prescribed ; in other sections of the Act there is no prescribed mode. See also *Edwards v. Hatton* L. R. 1 A. & E. 21 ; 30 J. P. 211.

5. The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside,(a) in which case the meeting on assembling shall choose one

Schedule 3. of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time.(b)
Part 1.

(a) These words remove the inconsistency which arose from 21 & 22 Vict. c. 98, s. 13, under which the meeting were to choose their chairman, but if a poll were demanded, the summoning officer had to conduct it. *Ex parte Littleborough Local Board*, 22 L. T. (N.S.) 437; 34 J. P. 469. Now the summoning officer will preside throughout unless unable or unwilling.

(b) In 21 & 22 Vict. c. 98, s. 13, the adjournment was to be *from day to day*, and this was interpreted to mean from one day to the next day. By the words of the text the adjournment may be to days at any intervals. But though the meeting must determine whether the adjournment shall take place, the decision as to when the adjourned meeting shall be held and when the poll shall be taken rests with the chairman. *Reg. v. D'Oyley*, 12 A. & E. 139; 9 L. J. M. C. 113, 117.

6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided, that if any owner or ratepayer demands(a) that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery, filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act;(b) except that in districts or places where there is no register of owners and proxies under this Act,(c) any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days(d) before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act, to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.(e)

For the purposes of such poll the summoning officer shall be the returning officer,(f) and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this Schedule.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same,(g) the declaration by the chairman shall, in the absence of proof to the contrary,(h) be sufficient evidence of the decision of such meeting.

(a) This gives to any owner or ratepayer the right to demand a poll whether the meeting wish it or not. Such a right exists as incident to similar meetings at common law, such as meetings of vestry or meetings under the Public Libraries Acts. *Reg. v. St. Matthew, Bethnal Green*, 32 L. T. (N.S.) 558; 39 J. P. 502; *Reg. v. Wimbledon Local Board*, 8 Q. B. D. 459; 51 L. J. Q. B. 219; 46 L. T. (N.S.) 47; 30 W. R. 400; 46 J. P. 292. Where a meeting was adjourned on motion made, and the chairman allowed the meeting to separate without putting the resolution to them, a *mandamus* was granted to call another meeting. *Reg. v. Norman*, 28 J. P. 279; 29 J. P. 407. As to the case where a poll is demanded by an unqualified person, and the demand is not challenged nor withdrawn, see *Reg. v. Miles*; *Ex parte Cole*, 64 L. J. Q. B. 420; 72 L. T. (N.S.) 502; 43 W. R. 445; 59 J. P. 407; 11 T. L. R. 320.

(b) See the several rules of the schedule, *ante*.

(c) The town council of a borough was not bound under Schedule II., rule 19, to keep a register of owners and proxies for the purpose of taking a poll in the borough under the Municipal Corporations Borough Funds Act, 1872. But a reasonable time must be allowed for owners and proxies to send in their claims. Therefore when a poll was demanded on the 28th December, and a notice was published that voting papers would be delivered on the 13th January, but such notice was not published until after the 1st January, an injunction was granted restraining the corporation from applying the public funds in payment of parliamentary expenses until the consent of the owners and ratepayers had been duly obtained. *Ward v. Sheffield (Mayor, &c., of)*, 19 Q. B. D. 22; 56 L. J. Q. B. 418.

(d) The words at least signify that both days are to be excluded. See *Reg. v. Justices of Salop*, 8 A. & E. 173; 7 L. J. M. C. 56.

(e) See Schedule II., rule 66, *ante*, p. 436.

(f) It is presumed that this will not be the case when the summoning officer has been unable or unwilling to preside, and a chairman has been chosen in his place.

(g) When is this withdrawal to take place? Apparently before the papers are sent out.

(h) This declaration is not absolutely conclusive, so that defaults which vitiate the proceedings may be shown by persons interested who dispute the result.

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Part 1.

7. A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

See as to the publication of the notices, rule (4), *ante*, and the notes thereon. The requisitions of this rule are not conditions precedent to the validity of the resolution, or to its being acted upon. No notice is required to be given of the rejection of the resolution, though it will be well if the summoning officer do communicate it to the Local Government Board in any case where they have taken action in the matter.

8. Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, (a) all costs incurred by the summoning officer in relation to the meeting and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; (b) in the case of a resolution so passed by owners or ratepayers in any urban district, (c) such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act.

(a) See section 272, *ante*, p. 373.

(b) Therefore these costs will be payable by the local board as soon as they shall be in funds after their election.

(c) This passage applies to resolutions which do not relate to the constitution of the district, such as those referred to in note (c) to rule (1), *ante*.

(d) In a borough this will be the borough fund or borough rate. In any other urban district it will be the general district rate. If there be any special rate which has been charged in any such district with the general expenses of this Act, these costs will, of course, be payable out of it. As to the costs of solicitors employed in these proceedings, see section 249, *ante*, p. 331.

SCHEDULE IV.

FORMS.

FORM A.

Form of Notice requiring Abatement of Nuisance.(a)

To [person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be].

Take notice that under the provisions of the Public Health Act, 1875, the [describe the local authority] being satisfied of the existence of a nuisance at [describe premises or place where the nuisance exists], arising from [describe the cause of nuisance, for instance, want of a privy or drain; or for further instance, a ditch or drain so foul as to be a nuisance or injurious to health; or for further instance, swine kept so as to be a nuisance or injurious to health], do hereby require you within _____ from the service of this notice to abate the same, and for that purpose to [state any things required to be done or works to be executed].(b)

Schedule 4. If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of }
local authority. }

(a) See section 94, *ante*, p. 115.

(b) See section 96, note (c), *ante*, p. 120, and the cases there cited.

FORM B.

Form of Summons.(a)

Summons.

To the owner or occupier(b) of [describe premises], situated at [insert such a description as may be sufficient to identify the premises] or to A.B. of .

County of _____ You are required to appear before [describe the court of
[or borough of _____ summary jurisdiction], at the petty sessions [or court] holden
&c., or district of _____ at _____ on the _____ day _____ next, at the hour
or as the case _____ of _____ in the _____ noon, to answer the complaint this
may be], to wit. _____ day made to me by _____ that in or on the premises above
mentioned [or in or on certain premises situated at No. _____ in the _____ street
in the parish of _____ or such other description or reference as may be sufficient to
identify the premises], in the district, under the Public Health Act, 1875, of [describe
the local authority], the following nuisance exists [describing it as the case may be], and
that the said nuisance is caused by the act or default of the occupier [or owner] of the
said premises, or by you A.B. [or in case the nuisance be discontinued, but likely to be re-
peated, say, there existed recently, to wit, on _____ or about the _____ day of _____ on
the premises, the following nuisance [describe the nuisance], and that the said nuisance
was caused [&c.], and although the same has since the said last-mentioned day been
abated or discontinued, there is reasonable ground to consider that the same or the
like nuisance is likely to recur on the said premises.

Given under my hand and seal this day of 18 .
J. S. (L.S.)

(a) See section 95, *ante*, p. 119.

(b) See section 267, note (e), *ante*, p. 360.

FORM C.

Form of Order for Abatement or Prohibition of Nuisance.(a)

To the owner [or occupier] of [describe the premises] situated [give such description as may be sufficient to identify the premises], or to A. B. of(b)

County of _____ } WHEREAS on the _____ day of _____ complaint was
[or borough, &c., of _____ } made before _____ Esquire, one of Her Majesty's justices of
or district } the peace acting in and for the county [or other jurisdiction]
of _____ or as the } stated in the margin [or as the case may be] by _____ that in
case may be.] } or on certain premises situated at _____ in the district under
the Public Health Act, 1875, of [describe the local authority] the following nuisance

then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or occupier*] of the said premises [*or was caused by A. B.*] *If the nuisance have been removed, say, the following nuisance existed on or about [the day the nuisance was ascertained to exist], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.*

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Forms.

And whereas the owner [*or occupier*] within the meaning of the said Public Health Act, 1875 [*or, the said A. B.*], hath this day appeared before us [*(or me) describing the court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say, and whereas it hath been this day proved to our (or my) satisfaction that a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A. B.] to appear this day before us (or me)*] hath been duly served according to the said Act.

Now on proof here had before us [*or me*] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or occupier*] of the said premises [*or by the said A. B.*], we [*or I*], in pursuance of the said Act, do order the said owner [*or occupier*] [*or A. B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed, (c) as, for instance, to provide for the cleanly and wholesome keeping of, or to remove the animal kept so as to be a nuisance or injurious to health; or, for further instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, &c.; or, for further instance, to cleanse or to cover or to fill up the said cess-pool, &c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the court that the nuisance is likely to recur on the premises, say, [And we] [or I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [or occupier, or A. B.], from [here insert the matter of the prohibition, as, for instance], from using the said house or building for human habitation until the same, in our [or my] judgment, is rendered fit for that purpose.*]

In case the nuisance were removed before complaint, say, Now, on proof here had before us [*or me*] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal we [*or I*] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or I*] [*order on local authority to do works*].

Given under the hands and seals of us [*or the hand and seal of me, describing the court*].

This day of 18 .

J. S. (L.S.)

J. P. (L.S.)

(a) See section 96, *ante*, p. 120.

(b) See section 267, note (e), *ante*, p. 360.

(c) See section 96, note (e), *ante*, p. 120. Note that the works required to be done must be specified in the order. See *Reg. v. Wheatley*, *ante*, p. 121.

Note also with reference to this and other forms in this schedule for the use of courts of summary jurisdiction, that the forms under the Summary Jurisdiction Act, 1879, are equally applicable, and in some respects are more suitable, having regard to the changes in the procedure introduced by that Act.

Schedule 4.

FORM D.

Forms.

Form of Order for Abatement of Nuisance by Local Authority.(a)

To the town council, &c. [as the case may be].

County, &c. }
to wit. } WHEREAS [recite complaint of nuisance as in last form].

And whereas it hath been now proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [as the case may be]; Now we [or I], in pursuance of the said Act, do order the said [local authority, naming it,] forthwith to [here specify the works to be done].

Given, &c. (as in last form).

(a) See section 100, ante, 123.

FORM E.

Form of Order to permit Execution of Works by Owner.(a)

County of }
[or borough, &c.], } WHEREAS complaint hath been made to me, E. F., Esquire, one
to wit. } of Her Majesty's justices of the peace in and for the county [or
borough, &c.] of by A. B., owner within the meaning of
the Public Health Act, 1875, of certain premises [describe situation of premises so as to identify them], that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said C. D. doth prevent the said A. B. from [here describe the works generally, according to circumstances, for instance, thus: constructing and laying down, in connection with the said house a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said C. D., having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said A. B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of 18 .
J. S. (L.S.)

(a) See section 306, ante, p. 401.

FORM F.(a)

Order of Justice for Admission of Officer of Local Authority.

WHEREAS [describe the local authority] have by their officer [naming him] made application to me, A. B., one of Her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [describe situation of premises so as to identify them], for the purpose of [describe the purpose, as the case may be], and that such demand has been refused.

Now, therefore, I, the said A. B., do hereby require you [name the person having custody of the premises], to admit the said [name the local authority], [or the officer of the said local authority], to the said premises, for the purpose aforesaid.

Given, &c. (as in last form).

(a) See section 102, ante, p. 124.

FORM G.

Schedule 4.

Forms.

Form of Notice requiring Owner to Sewer, &c., Private Street.(a)

To the owner of certain premises, fronting, adjoining, or abutting on a certain street called within the district of *[describe the local authority]*.

Whereas the said street is not sewered, levelled, paved, flagged, and channelled to the satisfaction of the above-named *[local authority]*; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channelled; Now, therefore, the said *[local authority]*, hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer, level, pave, flag, and channel the same within the space of *[state the time]* from the date hereof, in manner following; (that is to say,) the sewers to be laid or made *[here describe the mode to be adopted and material to be used]*, of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the *[local authority]*.

Each gully for surface draining, and its connection with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner *[here describe the mode to be adopted and the material to be used]*, and the said carriageway and footway to be paved *[here describe the mode to be adopted and the material to be used]*.

The channel stones to be *[here describe the mode to be adopted and the material to be used]*. The curb or side stones to be *[here described the mode to be adopted and the material to be used]*.

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the *[local authority]*, situate in street in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good workmanlike, and substantial manner, to the satisfaction of the said *[local authority]*, or their surveyor.

Dated this day of 18 .
(Signed)

Clerk to the said *[local authority]*.

(a) See section 150, *ante*, p. 176.

FORM H.

Form of Mortgage of Rates.(a)

By virtue of the Public Health Act, 1875, we, the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by A. B. of for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from *[the rates mortgaged]* as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said A. B., his executors, administrators,^(b) and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared that the said principal sum shall be repaid on the day of at *[place of payment]*.

Dated this day of one thousand eight hundred and
[To be sealed with the common seal of the local authority].

(a) See section 236, *ante*, p. 319.

(b) Thus it appears that this mortgage is personal and not real property.

Schedule 4.

Forms.

FORM I.

Form of Transfer of Mortgage.(a)

I, *A. B.*, of _____, in consideration of the sum of _____ paid to me by *C. D.*, of _____, do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, bearing date the _____ day of _____, and made by the local authority under the Public Health Act, 1875, for the district of _____ for securing the sum of _____ and interest thereon at _____ per centum per annum [or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this _____ day of _____ one thousand eight hundred and _____

A. B. (L.S.)

(a) See section 238, *ante*, p. 320.

FORM K.

Form of Rentcharge.(a)

By virtue of the Public Health Act, 1875, we, the _____, being the local authority under that Act for the district of _____, do hereby declare and absolutely order that the inheritance of the [dwelling-house, shop, lands, and premises, *as the case may be*], situated in _____ street, in the parish of _____, within the said district, and now in the occupation of _____, shall be absolutely charged with the sum of _____ pounds, paid by _____ of _____ for the improvement by drainage and water supply [*as the case may be*], of the same dwelling-house, shop, lands, and premises [*as the case may be*], together with interest for the same, from the date hereof, at _____ pounds per centum per annum, until full payment thereof; and also all costs incurred by the said _____, his executors, administrators, or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises, to the said _____, his executors, administrators, and assigns, in manner following; (that is to say,) the interest on such principal sum of _____ pounds, or on so much thereof as shall from time to time remain due and payable under this order shall be paid and payable by equal half-yearly payments whilst payable on the _____ day of _____ and the _____ day of _____ in every year, the first payment thereof to be made on the _____ day of _____ next, and such principal sum of _____ pounds shall be paid and payable by _____ equal annual instalments on the _____ day of _____ in each of the next succeeding _____ years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

[*To be sealed with the common seal of the local authority.*]

(a) See section 240, *ante*, p. 322.

FORM L.(a)

*Register of Owners for the District of _____**Notice of time for making Claims and Objections.*

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of _____, and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous

to have their names inserted in the register about to be made for the said district, **Schedule 4.**
and all persons who are desirous of objecting to any name on the register now in **Forms.**
force are hereby required to give or send to me, on some one of the first six days of
March next, a claim or objection (*as the case may be*), in the form hereunder set
forth.

(Signed) _____

Chairman of the local board.

(a) This form is retained although it purports to refer to the register to be kept under the
repealed Schedule II., for the Forms of Claim are incorporated with Schedule III., rule 6,
ante.

Owner's Claim.

To the chairman of the local board for the district of _____ .

This day of 18 .

I, the undersigned, claim to have my name inserted in the register of owners and
proxies for the district of _____, pursuant to the provisions of the Public Health
Act, 1875, as owner of the property hereinafter described, which is situated in the
parish of _____, that is to say :—(a)

I also state that the interest or estate which I have in such property, and the
amount of all the rent-service which I receive or pay in respect thereof, and the
names of the persons from whom I receive or to whom I pay such rent-service are
set forth in the form hereunder written.

Description of property (b)	In respect of which I have an estate or interest of (c)	And in respect of which I receive in rent-service the sum of (d)	From (e)	And in respect of which I pay in rent-service the sum of (f)	To (g)
		£ s. d.		£ s. d.	

Signature of claimant.

Address (h) of claimant.

(a) Here insert a clear statement of the property, as "house," "building," "house
and acres of land."

(b) Describe the property by its name, situation, or the name of the occupier, or any
other designation by which it may be identified.

(c) Describe the estate or interest, as *an estate in fee simple, of freehold, a term
of years*, and also whether it is held by the claimant solely, or jointly with others,
and in the case of a partner claiming, insert the number and names of the other partners in
the firm.

(d) If the property is let by the owner, insert the amount of rent received from each
tenant.

(e) Insert the name of tenant or tenants.

(f) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(g) Insert the name of the lessor.

(h) This need not be the owner's residence, but should be some address within the
district.

* A partner must set out the amount of rent-service which he would receive or pay if the
qualifying property were equally divided among his co-partners and himself.

Claim of Proxy.

This day of 18 .

I also state that the interest or estate which _____ has [or have] in such property, and the amount of the rent-service which he [or they] receives or pays [or pay] in respect thereof, and the names of the persons from whom he [or they] receives [or receive], or to whom he [or they] pays [or pay] such rent-service are set forth in the form hereunder written.

Description of property ^(b)	In respect of which the appointor has an estate or interest of ^(c)	And in respect of which the appointor receives in rent-service the sum of ^(d)	From ^(e)	And in respect of which the appointor pays in rent-service the sum of ^(f)	To ^(g)
		£ s. d.		£ s. d.	

Signature of proxy.

Address(h) of proxy.

(a) If the appointment itself is not sent, insert the words "an attested copy of."

(b) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(c) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely, or jointly with others.

(d) If the property is let by the appointor, insert the amount of rent received from each tenant.

(e) Insert name of tenant or tenants.

(f) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.

(q) Insert the name of the lessor.

(h) This need not be the proxy's residence, but should be some address within the district.

FORM M.

Appointment of Proxy.(a)

To the chairman of the local board for the district of .

This day of 18 .

I [or we], the undersigned, being the owner [or owners] of the property hereinafter described, which is situated in the parish of , do hereby appoint to vote as my [or our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [or we] hereby state that the description of the said property is as follows: viz.(a)

_____ Signature of the owner.(b)

_____ Address of owner.

_____ Witness.

(a) See the note to Form L., *ante*. This instrument must be stamped. See the note to rule 15 of the 2nd Schedule, *ante*, p. 433.

FORM N.

Form of Voting Paper at Elections of Members of Local Boards.(a)

* * * * *

(a) This form is omitted as having now no application, though it is not actually repealed.

FORM O.

Form of Voting Paper for Poll taken under Schedule III.(a)

Voting Paper, No. ().

At a meeting held on the day of at in the county of
it was agreed that the following resolution should be proposed to the owners and
ratepayers of .

(a) See Schedule III., rule (6), *ante*, p. 440.

(a) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(b) Or of three directors; or in the case of a corporation *say*, Given under our common, seal, and add the name of the person or persons entitled to affix the seal.

Schedule 4.
Forms.

(Set out the resolution.)

	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution ?				

(Signed) _____
or the mark of _____
Witness to the mark _____
or proxy for _____

Directions to the Voter.

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address(a) at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address,(a) and add after his signature the words "as proxy for," with the name of the body of persons(a) for whom he is proxy.

This paper will be collected on the _____ of _____ between the hours of _____ and _____

(a) The form seems to overlook the fact, that a proxy may act for an individual as well as for a body of persons. See Sched. II., r. 14, ante, p. 433.

Schedule 5.
Part 1.

SCHEDULE V.

PART I.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63 -	The Public Health Act, 1848 -	The whole Act.
14 & 15 Vict. c. 28 -	The Common Lodging Houses Act, 1851	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41 -	The Common Lodging Houses Act, 1853	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116 -	The Diseases Prevention Act, 1855	The whole Act, except so far as relates to the Metropolis.
18 & 19 Vict. c. 121 -	The Nuisances Removal Act for England, 1855	The whole Act, except so far as relates to the Metropolis.
21 & 22 Vict. c. 98 -	The Local Government Act, 1858	The whole Act.
23 & 24 Vict. c. 77 -	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the Metropolis.
24 & 25 Vict. c. 61 -	The Local Government Act (1858) Amendment Act, 1861	The whole Act.
26 & 27 Vict. c. 17 -	The Local Government Act Amendment Act, 1863	The whole Act.
26 & 27 Vict. c. 117 -	The Nuisances Removal Act for England (Amendment) Act, 1863	The whole Act, except so far as relates to the Metropolis.
28 & 29 Vict. c. 75 -	The Sewage Utilisation Act, 1865	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41 -	The Nuisances Removal (No. 1) Act, 1866	The whole Act, except so far as relates to the Metropolis.
29 & 30 Vict. c. 90 -	The Sanitary Act, 1866	Parts I., II., and III., except so far as relates to the Metropolis or to Scotland or Ireland.
30 & 31 Vict. c. 113 -	The Sewage Utilisation Act, 1867	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vict. c. 115 -	The Sanitary Act, 1868	The whole Act, except so far as relates to the Metropolis.

Schedule 5.

Part 1.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
32 & 33 Vict. c. 100 -	The Sanitary Loans Act, 1869 -	The whole Act, except so far as relates to the Metropolis.
33 & 34 Vict. c. 53 -	The Sanitary Act, 1870 -	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79 -	The Public Health Act, 1872 -	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89 -	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolis or the Metropolitan Police District.

Of the above Acts, the following (namely,) "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts."^(a)

(a) This definition ought more properly to have been inserted in section 4, *ante*, p. 21. It will be observed that the 37 & 38 Vict. c. 89, is not included in this definition, apparently through inadvertence.

All the above Acts, so far as they relate to the metropolis, have been repealed and consolidated by the Public Health (London) Act, 1891.

PART II.^(a)

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94 -	The Public Health Supplemental Act, 1849	The whole Act, except : Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90 -	The Public Health Supplemental Act, 1850 (No. 2)	The whole Act, except : Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42 -	The First Public Health Supplemental Act, 1852	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards), and section 13 (11 & 12 Vict. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act).

(a) This part has been repealed by the Statute Law Revision Act, 1888 (46 & 47 Vict c. 39).

PART III.(a)

11 & 12 Vict. c. 63, s. 83.

Schedule 5.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August, one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried any corpse or coffin in any vault or grave constructed or made contrary to this enactment,(b) shall for every such offence be liable to a penalty not exceeding fifty pounds,(c) which may be recovered by any person,(d) with full costs of suit, in an action of debt.(e)

Part 3.

As to interments within churches.

(a) In order to form a proper consolidation of the law, it was deemed necessary entirely to repeal all the statutes applicable to the general subject of sanitary law. But in some of these statutes were found certain provisions which could not be introduced into the body of the Act, but which required to be kept in force. Accordingly, those provisions are re-enacted in this part of the schedule.

(b) The judge of the Consistory Court of London has decided that these words do not extend to the placing of a sealed urn containing the cremated ashes of a deceased person in the wall of a church. *In re Kerr*, "Times," 9th June, 1894; 16 M. C. C. 304.

(c) See, as to the recovery of this penalty, section 251, *ante*, p. 333.

(d) That is, by any person, without the consent of the Attorney-General under section 253. See the notes to that section, *ante*, p. 336, and *Fletcher v. Hudson* there cited.

(e) The form of action here referred to is now abolished, but the right of action is not affected by recent legislation relating to procedure.

21 & 22 Vict. c. 98, s. 49.(a)

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.(b)

Local board to be burial board in certain cases.

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

(a) See also 29 & 30 Vict. c. 90, s. 44, *post*, and the Burial Acts printed in the Appendix.

(b) Under the Burial Acts the poor rate was chargeable.

As to the liability of a burial board to be assessed to income tax in respect of surplus income, see *Paddington Burial Board v. Commissioners of Inland Revenue*, 13 Q. B. D. 9; 53 L. J. Q. B. 224; 50 L. T. (N.S.) 211; 32 W. R. 551; 48 J. P. 311.

24 & 25 Vict. c. 61, s. 21.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass bye-laws (subject to the provisions of this Act)(a) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates(b) authorised to be levied by any urban authority constituted a burial board.

Urban authorities may repair fences surrounding burial grounds.

(a) See section 182, *ante*, p. 256.

(b) That is, out of the general district rate or out of the poor rates.

Schedule 5.

26 & 27 Vict. c. 17, s. 6.

Part 3.

Local government districts to be within highway districts for purpose of highway meetings.

Power to burial boards in certain cases to transfer their powers to urban authority.

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.

29 & 30 Vict. c. 90, s. 44.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer, the urban authority shall have all such estate, property, rights, powers, duties, and liabilities, as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

34 & 35 Vict. c. 33, s. 2, enacted that "This Act shall be construed as one with the Acts mentioned in the schedule to this Act, and those Acts and this Act may be cited together as the Burial Acts, 1852 to 1871, and each of them may be cited as the Burial Act of the year in which it was passed. The schedule sets forth the following Acts and their titles: 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100. The Short Titles Act, 1892 (55 & 56 Vict. c. 10), s. 1 (2), provides that the foregoing Acts, together with 34 & 35 Vict. c. 33; 43 & 44 Vict. 41; 44 & 45 Vict. c. 2; 48 & 49 Vict. c. 21, may be cited by the collective title of the Burial Acts, 1852 to 1885. It is manifestly impossible to include all these Acts in the present volume, but some of the provisions more directly affecting sanitary authorities will be found in the Appendix. As to the powers of urban district councils to act as burial boards under local Acts, see the Burial Act, 1855 (18 & 19 Vict. c. 128), ss. 19, 20. On the subject of the Burial Acts, reference should be made to Brooke Little's "Law of Burials."

29 & 30 Vict. c. 90, s. 51.

Power to reduce penalties imposed by

6 Geo. 4, c. 78.

All penalties imposed by the Act of the sixth year of King George the Fourth chapter seventy-eight, intituled "An Act to repeal the several laws relating to quarantine and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

This provision has been extended to London by 54 & 55 Vict. c. 76, s. 142.

29 & 30 Vict. c. 90, s. 52.

Description of vessels within provisions of 6 Geo. 4, c. 78.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom.

6 Geo. 4, c. 78, is set out in the Appendix, *post*.

This provision has been extended to London by 54 & 55 Vict. c. 76, s. 142.

35 & 36 Vict. c. 76, s. 34.

As to consent of Local Government Board required in certain cases.

Where in any local Acts the consent, sanction, or confirmation of one of Her Majesty's principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any bye-laws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.^(a) Schedule 5.
Part 3.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

This provision is extended to London by 54 & 55 Vict. c. 76, s. 142.

(a) See the definition of these Acts in section 4, *ante*, p. 21. The Acts themselves will be found in the Appendix.

35 & 36 Vict. c. 79, s. 35.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same,^(a) and under the Metropolis Water Acts, 1852 and 1871,^(b) shall be exercisable and performed by the Local Government Board, and the "Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts. Transfer of powers and duties of Board of Trade under Alkali Act, 1863, and Metropolis Water Acts, 1852 and 1871, to Local Government Board.

This provision is extended to London by 54 & 55 Vict. c. 142.

(a) The Alkali Act, 1863, and the Acts amending the same (26 & 27 Vict. c. 124; 31 & 32 Vict. c. 36; 37 & 38 Vict. c. 43) have been repealed by the Alkali, &c., Works Regulation Act, 1881 (44 & 45 Vict. c. 37). This statute imposes upon sanitary authorities important duties with respect to alkali works. It is printed in the Appendix, as also in the amending Act, 55 & 56 Vict. c. 30.

(b) See 15 & 16 Vict. c. 84; 34 & 35 Vict. c. 113.

35 & 36 Vict. c. 79, s. 36.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit. Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board.

This provision is extended to London by 54 & 55 Vict. c. 76, s. 142.

35 & 36 Vict. c. 79, s. 37.

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872,^(a) attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed. Transfer of officers to Local Government Board.

The Local Government Board may by order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

(a) 34 & 35 Vict. c. 70, transferred certain powers to the Local Government Board, and at the same time placed the officers of departments previously engaged thereon under the control of the new board. 35 & 36 Vict. c. 79, transferred other powers and in section 37 makes a similar provision as to the officers engaged therein. 34 & 35 Vict. c. 70, remains unrepealed (see the Act in the Appendix), but as 35 & 36 Vict. c. 79 is wholly repealed, the 37th section is here re-enacted.

35 & 36 Vict. c. 79, s. 38.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of Salary of medical officer.

Schedule 5. the Local Government Board such salary as the Treasury may from time to time determine.
Part 3.

Orders of
the Local
Government
Board how
to be
published.

See, as to the appointment of this officer, 21 & 22 Vict. c. 97, s. 4 ; but note that that section is repealed by the Statute Law Revision Act, 1875, so far as relates to his salary.

35 & 36 Vict. c. 79, s. 48.

Every general order of the Local Government Board, made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, shall be published in the *London Gazette*, and when so published shall take effect in like manner, and shall be of as much force and validity as any general order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf ; and as regards any single order of the said Board made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

See upon this section, which refers to orders relating to the relief of the poor, 4 & 5 Will. 4, c. 76, ss. 16, 17, 18 ; 10 & 11 Vict. c. 109, ss. 14, 17 ; 31 & 32 Vict. c. 122, ss. 1, 2.

And as to the publication of the orders and their admissibility as evidence, see section 135, *ante*, p. 152, and the notes to that section.

THE PUBLIC HEALTH (WATER) ACT, 1878.

(41 & 42 VICT. CAP. 25.)

An Act to amend the Public Health Act, 1875, so far as relates to the supply of Water. [4th July, 1878.]

WHEREAS it is expedient to amend the provisions of the Public Health Act, 1875: Section 1.
38 & 39 Vict.
c. 55.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875. Short title and construction.

2. This Act shall come into operation on the twenty-fifth day of March, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act. Commencement of Act.

3. It shall be the duty of every rural sanitary authority, (a) regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes (b) of the inmates of the house. Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.

Where it appears to a rural sanitary authority, on the report of their inspector of nuisances, or their medical officer of health, that any occupied dwelling-house within their district has not such supply within a reasonable distance, and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence a week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the local authority determine under all the circumstances of the case to be reasonable, (c) and that the expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses, (d) proceedings may be taken as follows:

- (1.) The authority may serve on the owner (e) of the house a notice requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose. (f)

Section 3.

- (2.) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the owner a second notice^(e) informing him that if the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of providing the supply will in that case be payable by the owner or as a private improvement expense.^(d)
- (3.) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house, and for the purposes of such entry sections 102 and 103 of the Public Health Act, 1875,^(g) shall apply until the works are completed, in the same manner as if an order of a court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with.
- (4.) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house,^(h) or may, at the option of the authority, be declared, by their order, to be private improvement expenses.^(d)
- (5.) Where the owners of two or more houses have failed to comply with the requirements of the notices served on them under this section, and the authority might, under this Act, execute the necessary works for providing a water supply for each house,⁽ⁱ⁾ the authority may, if it appears to them desirable, and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as they deem just.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should not be complied with,^(k) withdraw the notice or modify the requirements thereof.

Provided that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost.^(l)

(a) Note that this applies only to a rural authority, not to an urban authority. But an urban authority may obtain the power of a rural authority under section 11, *post*, p. 463.

It has been held that the provisions of this Act do not repeal section 62 of the Public Health Act, 1875, *ante*, p. 87. *Colne Valley Waterworks Company v. Treharne*, 50 L. T. (N.S.) 617; 48 J. P. 279. A notice may still be given, therefore, under that section.

(b) As to what are *domestic* purposes, see the Waterworks Clauses Act, 1847, section 53, in the Appendix.

Note to
Section 3.

(c) The meaning of this appears to be that when a house has not a sufficient supply of wholesome water, the rural authority may proceed under the following part of the section, provided the cost of providing a sufficient supply, *i.e.*, of executing the works necessary for the supply, does not exceed 8*l.* 13*s.* 4*d.* If the costs would exceed that sum, the rural authority must apply to the Local Government Board to determine what is a reasonable sum, not exceeding 13*l.* in any case. Compare with this the Public Health Act, 1875, s. 62, *ante*, p. 87.

(d) See the Act of 1875, s. 213, *ante*, p. 291.

(e) See the definition of *owner*, *ante*, p. 6. And as to the service of the notice, see the Act of 1875, ss. 266, 267, *ante*, p. 358. Forms of these notices are set out in the schedule to this Act.

(f) These words may require the rural authority to specify the particular works they may think necessary. See the note to similar words as used in the Act of 1875, s. 96, *ante*, p. 120 ; but see Form A. in the schedule to this Act.

(g) *Ante*, pp. 124, 125. No order is necessary to justify this entry.

(h) As to the recovery of these expenses, see the Public Health Act, 1875, s. 251, *ante*, p. 333.

(i) Note the words "for each house." The previous provisions of the section must, therefore, have been complied with in respect of each house, considered separately.

(k) Cause may be shown in the memorial mentioned in the next section, or the owner may be heard personally by the local authority.

(l) See as to the consequences of default in the performance of his duty, the Public Health Act, 1875, s. 299, *ante*, p. 394.

4. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and objects to such requirement on any of the following grounds ; (that is to say,) Appeal by owner against requirement to provide water supply.

- (1.) That the supply is not required ; or
- (2.) That the time limited by the notice for providing the supply is insufficient ; or
- (3.) That it is impracticable to provide the supply at a reasonable cost ;(a) or
- (4.) That the authority ought themselves to provide a supply of water for the district or contributory place(b) in which the house is situated, or to render the existing supply of water wholesome ; or
- (5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be a charge on the district or contributory place ;

he may, within twenty-one days after service on him of the second notice, address a memorial(c) to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they might otherwise execute under this Act until they have been authorised to execute the same by a court of summary jurisdiction(d) or by the Local Government Board in manner hereinafter provided.

If the objections stated in the memorial do not include either the fourth or fifth of the above-mentioned grounds, the authority may apply to a court of summary jurisdiction(d) for an order authorising them to proceed with the works, and thereupon the court shall summon the owner, and, if satisfied on hearing the case that the objections are not

Section 4. well founded, shall make an order authorising the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order.(e)

If the objections stated in the memorial are or include the fourth and fifth of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the Local Government Board, who may either cancel the requirement of the authority, or confirm the same, with or without modifications.(f)

If the Local Government Board confirm the requirement they shall issue an order(g) authorising the authority, subject to such modifications, if any, as they prescribe, to execute the works in the event of such works not being executed by the owner within a time limited by the order.

Any such order(f) may, if the Local Government Board think it equitable so to do, apportion the expense of providing the supply between the owner of the house and the authority of the district comprising the contributory place(b) in which the house is situate, or between the owner and any other person or persons.

If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a complaint of default made to the Local Government Board against the authority under the 299th section of the Public Health Act, 1875.(h)

38 & 89 Vict.
c. 55.

(a) This means apparently that the supply cannot be provided without the expenditure of a sum greater than the maximum fixed by the last section.

(b) As to what is a contributory place, see section 229, *ante*, p. 308.

(c) No form is prescribed for this memorial. It should, however, be carefully drawn up, and it should, in fact, follow the words of this section as nearly as possible. It is not necessary to state evidence in support of the objections.

(d) See the definition, *ante*, p. 22.

(e) Note that the order does not require the owner to execute the works unless he chooses, and that it merely authorises the rural authority to do so.

(f) No provision is made for the hearing of the case by the Local Government Board. They may direct an inquiry under the Public Health Act, 1875, s. 293, *ante*, p. 389. But if they do not direct an inquiry, it would seem that the memorial addressed to them should contain a full statement of the facts relied upon in support of the objections. The functions of the Local Government Board under this section appear to be judicial, and if so, the observations of the Court of Appeal in *Reg. v. Local Government Board*, *ante*, p. 360, as to allowing the memorialists to reply to the answer of the local authority, would seem to apply.

(g) This order will be conclusive as to the power of the local authority to execute the works, and as to the apportionment of the expenses. See the Public Health Act, 1875, section 295, *ante*, p. 389. Note that this order, however, like that of the court of summary jurisdiction above mentioned, merely *authorises* the rural authority to execute the works.

(h) See this section, *ante*, p. 394.

Appeal
against
apportion-
ment of
expenses.

5. Where the expenses of providing a joint supply of water for two or more houses are apportioned under this Act(a) by a rural sanitary authority among the owners of the several houses, notice of such apportionment(b) shall be forthwith given to each of such owners, and if any owner objects to the apportionment as unjust, he may, within twenty-one days after service on him of notice thereof, apply to a justice, and

thereupon the justice may summon the authority, and also the other owners, to show cause before a court of summary jurisdiction(*c*) why the apportionment should not be varied, and the court may either dismiss the application or make such order varying the apportionment as to the court may appear reasonable.(*d*)

Section 5.

(*a*) That is, under section 3, sub-section (5), *supra*.

(*b*) As to the service of such notices, see the Public Health Act, 1875, ss. 266, 267, *ante*, pp. 358, 359.

(*c*) See the definition, *ante*, p. 22. Any one justice may issue the summons, but the hearing must be before a court of two or more justices or a stipendiary magistrate.

(*d*) This order may be appealed from under the Public Health Act, 1875, s. 269, *ante*, p. 363.

6. It shall not be lawful in any rural district for the owner of any dwelling-house which may be erected after the date of the commencement of this Act, or of any dwelling-house which after that date may be pulled down to or below the ground floor and rebuilt, to occupy the same, or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a certificate that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house.(*a*)

Houses in rural districts not to be erected or rebuilt without sufficient water supply.

If the sanitary authority refuse to grant such certificate, the owner may apply to a court of summary jurisdiction for an order authorising the occupation of the house notwithstanding the refusal of the certificate, and thereupon the court shall summon the authority, and if the court, after hearing the case, is of opinion that the certificate ought to have been granted, the court may make an order authorising the occupation of the house.(*b*)

Any owner(*c*) who occupies a house or cause or permits it to be occupied in contravention of this section shall be liable on conviction by a court of summary jurisdiction to a penalty not exceeding ten pounds.(*d*)

(*a*) This section should be compared with the Public Health Act, 1875, s. 62, *ante*, p. 87, which applies to all houses, whether old or new. The effect of this provision is to prevent the occupation of any new house in a rural district until it has been properly supplied with water.

(*b*) For the definition of a court of summary jurisdiction, see section 4, *ante*, p. 22. This clause gives the owner an appeal to the court. There is a further appeal to the quarter sessions under section 269, *ante*, p. 363, against the determination of the court whether the order is made or refused.

(*c*) See the definition, *ante*, p. 6.

(*d*) For the recovery of this penalty, see the Public Health Act, 1875, s. 251, *ante*, p. 333; see section 253, *ante*, p. 336.

7. It shall be the duty of every rural sanitary authority from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorised in writing for that purpose by the authority, if they or he

Periodical inspections of water supply.

Section 7. have or has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water, sufficient for the consumption and use for domestic purposes^(a) of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance ; and for the purposes of any such admission sections 102 and 103 of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorised as aforesaid were an officer of the rural sanitary authority.^(b)

38 & 39 Vict.
c. 55.

^(a) See the note to these words as used in the Waterworks Clauses Act (10 & 11 Vict. c. 17), s. 53, in the Appendix, *post*.

^(b) See these sections, *ante*, pp. 124, 125. Note that the officer or other person cannot effect an entry by force. If admission is denied him he must obtain a justice's order.

Explanation
of section 62
of 38 & 39
Vict. c. 55, as
to the mean-
ing of
"reasonable
cost."

8. Where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875,^(a) to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges.^(b)

^(a) See this section, *ante*, p. 87.

^(b) The Local Government Board have made orders under the section referred to in many cases.

Rating for
water supply
by stand-
pipes.

9. Where a rural sanitary authority have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district they may recover water rates or water rents^(a) from the owner or occupier of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the houses.^(b)

^(a) Water *rates* are made under section 56 of the Public Health Act, 1875, *ante*, p. 83. Water *rents* are payments made to the authority under agreements between the authority and the consumer. See section 56, note ^(a), *ante*, p. 83.

^(b) *Prima facie* water rates will be payable in respect of every house within 200 feet of a stand-pipe. But payment cannot be enforced if the person charged can show that he is within the proviso.

Power to
require water

10. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban

district(*a*) or in any contributory place,^(b) and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place.^(c)

Section 7.
rates to be levied.
38 & 39 Vict.
c. 55.

(*a*) As to what is an urban district, see the Public Health Act, 1875, s. 6, *ante*, p. 24.

(*b*) As to what is a contributory place, see the Public Health Act, 1875, s. 229, *ante*, p. 308.

(*c*) The effect of this is to transfer all or part of the expense of the water supply from the entire urban district or contributory place to the consumers. The default of the local authority in complying with this section is not provided for. It is doubtful whether such default is within the terms of section 299 of the Public Health Act, 1875, *ante*, p. 394; but if that section does not apply the proper remedy is apparently by *mandamus*.

11. The Local Government Board may, if they think fit, by order,^(a) invest any urban sanitary authority with all or any of the powers and duties which are by this Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.^(b)

Powers of urban sanitary authorities in certain cases.

(*a*) This order will be conclusive. See section 295, *ante*, p. 389.

(*b*) The Local Government Board have thus unlimited discretion as to the extent to which the Act is to be applied to any urban district. It has been suggested that this section does not enable the Local Government Board to apply some of the provisions of this Act, *e.g.*, section 6, to urban districts. It is submitted that there is no doubt as to the power of the Board in this respect, though the difficulty of carrying the applied provisions into effect may be such as to prevent the exercise of the power to any considerable extent.

12. The forms contained in the schedule to this Act, or forms to like effect varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

Forms in the schedule.

13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom.

Powers of Act cumulative.

THE SCHEDULE.

Section 12.

FORM (A).

*Form of Notice requiring Owner to provide a supply of Water for an Occupied House.*¹

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said

Schedule. house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost; and whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of 187 .
(Signed)

Clerk to the said [*local authority*].

Section 12.

FORM (B).

Form of Second Notice to be served where Requirements of First Notice have not been complied with.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas on the day of the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice bearing date the day of requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice:

And whereas the said notice has not been complied with: Now, therefore, we, the said [*local authority*], do hereby give you notice that if the requirements of the said first notice dated the day of are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily or be recovered as private improvement expenses.

Dated this day of 187 .
(Signed)

Clerk to the said [*local authority*].

THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 VICT. CAP. 31.)

An Act to amend the Public Health Act, 1875, as to Interments.

[21st July, 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say),

Section 1.

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

Short title and construction.
38 & 39 Vict.
c. 55.

2. (1.) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery ; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery.

The provisions of 38 & 39 Vict. c. 55, extended to cemeteries.

(2.) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district.

38 & 39 Vict.
c. 55, ss. 32-34.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The provisions of the principal Act here referred to are sections 141—3, *ante*, pp. 153—6. The text, therefore, enables the local authority to provide and fit up a cemetery, and they must do so if the Local Government Board so require. They may also make bye-laws with respect to its management and charges for the use of the same.

On the 19th August, 1879, the Local Government Board issued a circular in which the duties and powers of local authorities are clearly set forth, and it is, therefore, here set out nearly at length :—

The object of the Act is to enable sanitary authorities, rural as well as urban, to provide cemeteries for their districts, and for this purpose all the provisions of the Public Health Act, 1875, with respect to a mortuary are extended to a cemetery.

As the sanitary authority are aware, section 141 of the Public Health Act enables a sanitary authority to provide and fit up a proper place as a mortuary for the reception of dead bodies before interment, and to make bye-laws with respect to the management and charges for the use of the same, and it is, moreover, compulsory on a sanitary authority to provide a mortuary if they should be required by the Local Government Board to do so.

The effect, therefore, of the Act, which has just been passed, is, in like manner, to empower a sanitary authority to provide a cemetery, and to render it compulsory on them to do so if the Local Government Board should require one to be provided.

**Note to
Section 2.**

The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute ; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them.

The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action :

1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided ;
2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health ;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place, or within certain limits.

There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil ; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow.

The question, however, whether a cemetery should be provided for a particular locality will be one for the determination of the sanitary authority in the first instance ; and it is only in the event of their default to establish a proper cemetery where one is required, or in consequence of a loan being needed to carry out the undertaking, or, if they should determine to construct a cemetery outside their district, of objection being taken to such a proceeding, that the Local Government Board have any authority to interfere.

The President has reason to believe that in numerous localities considerations of public health require that a cemetery should be provided, and with a view of enabling the authority to determine whether on sanitary grounds it is necessary, or desirable, that a cemetery should be provided for all or any part of their district the medical officers of health should be instructed to report upon the state of the several burial grounds within the area subject to their jurisdiction.

The statute enables a sanitary authority to acquire, construct, and maintain a cemetery either within or without their district. In the latter case, however, at least three months before the cemetery is commenced, public notice must be given, and, in the event of any objection, the work cannot proceed without the sanction of the Local Government Board after the local inquiry.

It will be seen, therefore, that a sanitary authority are empowered not only to establish a cemetery, but also to purchase an existing one ; and it will be competent for the sanitary authority, in the event of their failure to acquire a suitable site by agreement, to apply for a provisional order enabling them to take lands for the purpose compulsorily.

Moreover, with the sanction of the central authority, they will be enabled to borrow money to pay for the purchase of the requisite land, for draining and inclosing the site, and for rendering it otherwise suitable for the object intended.

At the same time I am to point out that, if the sanitary authority should deem it expedient to provide a cemetery without resorting to a loan for the purpose, it is competent for them to do so, and to charge the cost upon the local rates.

In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district or a special drainage district, it would be competent

for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place.

In addition to the powers conferred upon sanitary authorities of purchasing land for a cemetery the recent Act authorizes them to accept a donation of land for the purpose, and also a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of section 141 of the Public Health Act, 1875, will enable the sanitary authority to make bye-laws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein.

It should be borne in mind, however, that such bye-laws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the department should hereafter frame a series of model bye-laws to be recommended for adoption.

In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some general and several local improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

The President, therefore, thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exercisable by them under the incorporated enactments.

With respect to the Making of the Cemetery.

The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier.

The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery.

The cemetery must be enclosed by substantial walls, or iron railings, of the height of eight feet at least.

The sanitary authority must keep the cemetery, and the buildings and fences thereof, in complete repair and in good order and condition.

With respect to Burials.

The sanitary authority may set apart a portion of the cemetery for burials according to the rites of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart.

A chapel, to be approved by the bishop, must be built on the consecrated part for the performance of the burial service of the Established Church.

A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Estab-

**Note to
Section 2.**

lished Church, and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church.

With respect to exclusive rights of Burial and Monumental Inscriptions.

The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the legislature.

Model bye-laws for cemeteries have also been issued. In the memorandum which accompanied these bye-laws the Secretary of the Board (Sir John Lambert) says:—

The combined effect of the enactments in section 141 of the Public Health Act, 1875, and in section 2 (1) of the Public Health (Interments) Act, 1879, is to enable a local authority to make bye-laws with respect to the management and charges for use of a cemetery provided under the latter Act. It is, however, to be observed that this power of making bye-laws is only one of several means which the local authority may employ for the proper control of their cemetery. For example, section 37 of the Cemeteries Clauses Act, 1847, which is incorporated with the Act of 1879, enables the local authority to appoint gravediggers and other servants necessary for the care and use of the cemetery. Where a gravedigger is appointed by the local authority, they may conveniently dispense with many regulations which might otherwise require to be embodied in bye-laws. It may be assumed that, as a servant of the local authority, the gravedigger will act in strict accordance with their directions as to such matters as the appointment of grave spaces, the dimension of graves, and their separation by a sufficient thickness of undisturbed earth. These subjects may accordingly be regarded as outside the range of such bye-laws as will ordinarily be needed. At the same time it is important, for the reasons which are explained in the accompanying memorandum, that the local authority should give definite instructions to their servants as to the manner in which their duties are to be discharged.

The Board desire me to add that local authorities who may intend to adopt the model clauses as the basis of their bye-laws will, on application to the Board, be furnished with copies of those clauses, on foolscap paper, with a margin for annotations. These draft forms should be used in accordance with the instructions in the Circular of the 25th of July, 1877.

Reference may also be made to the memorandum issued by the Local Government Board on the sanitary requirements of cemeteries. This memorandum will be found in *Glen's Local Government Orders*, at p. 507, but it is too long for insertion here.

10 & 11 Vict.
c. 65, incor-
porated with
this Act.

3. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act.

This Act is set out in the Appendix, *post*.

THE PUBLIC HEALTH (FRUIT PICKERS LODGINGS)
ACT, 1882.

(45 & 46 VICT. CAP. 23.)

An Act to extend the Public Health Act, 1875, to the making of Bye-laws for Fruit Pickers.
[12th July, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Section 1.

1. This Act may be cited as the Public Health (Fruit Pickers Lodgings) Act, 1882, and shall be construed as one with the Public Health Act, 1875.

Short title and construction of Act.
38 & 39 Vict. c. 55.
Power to make bye-laws for fruit pickers.

2. Section three hundred and fourteen of the Public Health Act, 1875,(a) which enables any local authority to make bye-laws for securing the decent lodging and accommodation of persons engaged in hop picking within the district of such authority, shall be deemed to extend to and authorise the making of bye-laws for securing the decent lodging and accommodation of persons engaged in the picking of fruit and vegetables.

(a) *Ante*, p. 410.

THE PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS),
AMENDMENT ACT, 1883.

(46 & 47 VICT. CAP. 37.)

An Act to amend the Public Health Act, 1875, and to make provision with respect to the support of Public Sewers and Sewage Works in Mining Districts.
[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the Principal Act), as amended by the Acts for the time being in force amending the same.

Short title and construction.

This Act has been referred to in the notes to some of the sections of the Public Health Act, 1875. It was passed soon after, and indeed apparently in consequence of, the decision of the Court of Appeal in *Re The Corporation of Dudley*, 8 Q. B. D.

**Note to
Section 1.**

86; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. In that case it was held that the Public Health Act, 1875, imposed upon landowners through whose land a sewer was laid, an obligation to preserve to such sewer *subjacent* support, and gave them a right to immediate compensation for being deprived of the free power of working subjacent mines. The court seemed to doubt whether any obligation was imposed as to *lateral* support, though from the remarks of JESSEL, M.R., in *Roderick v. Aston Local Board*, 5 Ch. D. 328; 46 L. J. Ch. 802; 36 L. T. (N.S.) 328; 25 W. R. 403; 41 J. P. 516, it might be inferred that in the opinion of that learned judge there was a right of lateral support for which the landowner was entitled to compensation. The present Act deals with the subject of support, but though the title would imply that it has reference only to sewers, the definition in the next section shows that it has a much wider application. Its effect is briefly as follows:—The local authority are not to be entitled to minerals under any sanitary works constructed by them unless such minerals have been expressly purchased. Such minerals must not be worked if under or near the sanitary works without giving notice to the local authority, who may then take the minerals, making compensation for them. The local authority may, however, define the extent to which they desire support to be left. The amount of compensation is to be settled by arbitration. If the local authority refuse to take the minerals, the owner is to be at liberty to work them though he must not do so in any unusual manner so as to cause damage. Power is preserved to the owner, if he is prevented from working the mines under the sanitary works, of making mining communications so as to work the mines on either side. Except as aforesaid, a local authority are not hereafter to acquire any right of support, whether vertical or lateral; but the saving clause preserves all rights actually acquired before the passing of the Act. This act will materially affect the amount of compensation to be paid by a local authority in a mining district, for as by the mere execution of a sanitary work they acquire no right of support, they will not have to pay for it until the owner of the mines is desirous of working them. It is to be noticed, however, that the Act is limited in its application to support from mining lands. The law as to support in other cases remains as it was before the Act passed; that is to say, as declared in *The Corporation of Dudley's Case*, *supra*.

**Interpreta-
tion.**

2. In this Act—

The expression “sanitary work” means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

The expression “support” includes vertical and lateral support: (a)

The expression “Sanitary Act” means the Act or provisional order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or order was passed and confirmed before or after the commencement of this Act:

The expression “person” includes a body corporate.

(a) It will be observed that the Act applies to the support of any sanitary works besides sewers, though the title would imply that it was confined to sewers. Thus, it will apply to gas and waterworks, or pipes, and to sewage works other than sewage.

**Application
of provisions
of the Water-
works Clauses
Act, 1847 (10**

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), (a) with respect to mines, shall, in relation to any sanitary work (b) of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act (b) under the

authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say) :—

Section 3.
 & 11 Vict.
 c. 17), with
 respect to
 mines, to sani-
 tary works
 over mines.

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression “the undertakers” referred to the local authority, and as if the expression “the Special Act” referred to such Sanitary Act^(b) and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work :^(b)

(2.) The local authority by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines,^(c) may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act, or to such less distance as the local authority think fit :^(d)

(3.) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act :^(e)

(4.) The amount of any compensation in respect of support for a sanitary work^(b) payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act,^(b) together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act :^(f)

(5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place.^(g)

(a) These sections are set out in the Appendix, *post*.

(b) See the definition in the last section.

(c) The notice here referred to is the notice to the owner not to work the minerals, under 10 & 11 Vict. c. 17, s. 22.

(d) Forty yards is the extent prescribed by the Waterworks Clauses Act. Under this Act the local authority may require support to any extent, whether less or more than forty yards. This will to some extent, if not altogether, obviate the difficulty

Note to Section 3. arising out of the decision in *Metropolitan Board of Works v. Metropolitan Railway Company*, ante, p. 39.

(e) That is, on or before 25th August, 1884. See the section referred to.

(f) That is to say, such compensation shall be paid pursuant to the provisions of the principal Act, unless the work is done pursuant to a special Act or provisional order which makes special provision for these purposes.

(g) This clause was probably inserted to protect the rights of the owners of mines under roads vested in urban authorities under the Public Health Act, 1875, s. 149, ante, p. 169. It has been decided that that section does not vest the minerals in the urban authority (see the cases cited in the notes to that section); and the Highway Act, 1878 (41 & 42 Vict. c. 77), s. 27, post, contains an express provision with reference to the right to work mines under disturnpiked roads which have become vested in an urban authority. See *Attorney-General v. Conduit Colliery Company* there cited. The case of *Normanton Gas Company v. Pope*, 49 L. T. (N.S.) 798, may be referred to in illustration of this clause. The question in that case related to the right of sub-jacent support to gas pipes laid in a highway.

Limitation of right to support for sanitary works over mines.

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act(a) under the authority of which a sanitary work(b) has been or is constructed or maintained, be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

(a) See the definition in section 2, ante.

(b) This section gives the Act a retrospective operation, except as to cases in which a right of support has already been acquired, as to which see the next section. Its effect is to prevent for the future the acquisition of any right of support otherwise than as provided by the Act. Therefore no such right can hereafter be acquired by prescription.

With reference to the operation of the Statute of Limitations upon the right of action arising out of subsidences caused by mining operations, see *Darley Main Colliery v. Mitchell*, 11 App. Cas. 127; 55 L. J. Q. B. 529; 64 L. T. 882; 32 W. R. 947; 48 J. P. 823; *Crumbie v. Wallsend Local Board* [1891], 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. (N.S.) 490; 55 J. P. 491; 7 T. L. R. 329.

5. Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this Act.

Where any right of support has been acquired(a) before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right, or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

(a) Note these words. This section was inserted to preserve to the local authority such rights of support as they had actually acquired by prescription at the date of the Act.

Savings.

But such a right must have been actually acquired ; in other words, if it is claimed to have been acquired by prescription, the prescriptive period must have been complete before the passing of the Act. If it was not complete the landowner will be entitled to the benefit of the Act.

Note to
Section 5.

THE EPIDEMIC AND OTHER DISEASES PREVENTION ACT, 1883.

(46 & 47 VICT. CAP. 59.)

An Act to make better provision for the prevention of outbreaks of formidable epidemic, endemic, or infectious diseases, and to amend the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878. [25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Epidemic and other Diseases Prevention Act, 1883. Short title.

2. Whenever any part of England or of Ireland appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease, (a) and the Local Government Board, England, under the provisions of the Public Health Act, England, 1875 ; (b) or the Local Government Board, Ireland, under the provisions of the Public Health Act, Ireland, 1878, make regulations for all or any of the following purposes, namely :

Extension of borrowing powers for preventing disease.
38 & 39 Vict. c. 55.
41 & 42 Vict. c. 52.

- (1.) For the speedy interment of the dead.
- (2.) For house to house visitation.
- (3.) For the provision of medical aid and hospital accommodation ; and
- (4.) For the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease.

The purposes named in the said regulations shall be deemed to be purposes for which sanitary authorities may borrow money, and the local authorities in England, and the sanitary authorities in Ireland, charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England and the Board of Public Works in Ireland may lend money to such authorities, as if such purposes were "works" for which loans may be granted under the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878. (c)

Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the Local Government Board desirable in order to the prompt and effective execution of such regulations. (d)

(a) See the notes to the Public Health Act, 1875, s. 134, *ante*, p. 151.

(b) That is under section 134, *ante*, p. 151.

**Note to
Section 2.**

(c) See the provisions of the Public Health Act, 1875, ss. 233—244, *ante*, pp. 314—325, as to borrowing. See also the Public Works Loans Act, 1875, and the Acts amending it, in the Appendix.

(d) See note (a) to section 233, *ante*, p. 314, and section 234, sub-section (3), as to the public notice and inquiry here referred to.

Amendment
of clause 150
of Public
Health Act,
Ireland, 1878.

3. Whereas by the one hundred and fiftieth section of the Public Health (Ireland) Act, 1878, the board of guardians of any union in which regulations for prevention of the spread of formidable epidemic, endemic, or infectious diseases made by the Local Government Board are declared to be in force, are the authority appointed to superintend and see to the execution of such regulations, to the exclusion of all other sanitary authorities.

And whereas in the event of the outbreak of any formidable epidemic, such exclusion of the urban sanitary authority in cities and large towns might lead to delay and inconvenience.

Be it enacted that whenever the Local Government Board (Ireland) shall make any such regulations, the board may direct the urban sanitary authority within any district in which such regulations shall be declared to be in force, to superintend and see to the execution of such regulations, or any of them, either independently or jointly with the board of guardians of any union within which or within part of which regulations so issued by the Local Government Board are declared to be in force, and thereupon every urban sanitary authority so directed by the Local Government Board shall have the like powers and authority in every respect as the board of guardians of any union within such district.

THE PUBLIC HEALTH (CONFIRMATION OF BYE-LAWS)
ACT, 1884.

(47 & 48 VICT. CAP. 12).(a)

An Act to amend the Public Health Act, 1875, so far as relates to the Confirmation of Bye-Laws. [19th May, 1884.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

Short title
and construc-
tion.

1. This Act may be cited as the Public Health (Confirmation of Bye-laws) Act, 1884, and shall be construed as one with the Public Health Act, 1875.

Definitions.

2. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them : (that is to say,)

(¹) 10 & 11
Vict. c. 34,
s. 128.

"Incorporated enactments" means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847,⁽¹⁾ sections sixty-

eight and sixty-nine of the Town Police Clauses Act, 1847,⁽²⁾ and section forty-two of the Markets and Fairs Clauses Act, 1847,⁽³⁾ which Acts are hereinafter referred to as the Incorporated Acts :^(a)

“Confirming authority” means, as regards bye-laws, rules, and regulations confirmed prior to the nineteenth day of August, one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, and confirmed prior to the tenth day of August, one thousand eight hundred and seventy-two, one of Her Majesty’s principal Secretaries of State ; and as regards other bye-laws, rules, and regulations, the Local Government Board.^(b)

Section 2.

Bye-laws as to slaughter-houses.

(²) 10 & 11 Vict. c. 89, ss. 68, 69.

Bye-laws as to hackney carriages and public bathing.

(³) 10 & 11 Vict. c. 14, s. 42.

Bye-laws as to markets.

Confirmation of bye-laws.

3. Every bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any local Act, or any provisional order, or any Act confirming such provisional order, and every rule and regulation made or to be made by an urban authority, under section forty-eight of the Tramways Act, 1870,^(c) shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval.

4. This Act shall not invalidate the confirmation, allowance, or approval of any bye-law, rule, or regulation, confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, if such bye-law has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of bye-laws in any of the incorporated Acts, such bye-law is required to be confirmed, allowed, or approved otherwise than by the confirming authority.

Saving clause.

(a) The Towns Improvement Clauses Act, 1847, s. 128, provides that the commissioners, *i.e.*, the urban authority, shall, from time to time, by bye-laws to be made and confirmed *in manner hereinafter provided*, make regulations for the licensing, &c., of slaughter-houses, &c. The manner provided by that Act is set out in sections 200—209, which are not, however, incorporated with the Public Health Act, but it would seem, notwithstanding, that these provisions applied to bye-laws made by a local authority pursuant to the Public Health Act, 1875. See *Wallasey Tramway Company v. Wallasey Local Board*, 47 J. P. 821. However this may be, section 202 required the bye-laws to be confirmed in the prescribed manner, and if no manner of confirmation were prescribed, then by a judge of the superior courts or by the justices in quarter sessions. In order to remove all doubts with regard to the application of these provisions to bye-laws made by a local authority under the Public Health Act, 1875, the Act provides that no confirmation shall be necessary in future except that of the Local Government Board. Provision is also made for the validity of past confirmation by the Secretaries of State under former Public Health Acts or local Acts. The foregoing remarks apply *mutatis mutandis* to the other incorporated enactments, all of which are set out in the Appendix, *post*.

(b) As to the provisions of the Public Health Act, 1875, with regard to the confirmation of bye-laws. see section 184, *ante*, p. 257.

(c) See the section in the Appendix, *post*.

THE PUBLIC HEALTH (OFFICERS) ACT, 1884.

(47 & 48 VICT. CAP. 74.)

An Act to amend the Public Health Act, 1875, with respect to the Officers of Local Authorities. [14th August, 1884.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Section 1. **1.** This Act may be cited as the Public Health (Officers) Act, 1884, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

Short title.

Restriction on recovery of penalties.

2. Proceedings for the recovery of any penalty under the hundred and ninety-third section of the principal Act shall not be taken except with the consent in writing of the Attorney-General.

See the Public Health Act, 1875, s. 193, *ante*, p. 265. That section forbids officers of a local authority to contract with such authority or to accept any fee or reward other than their proper salaries. This provision is enforced by a penalty of 50*l.*, which the section provided might be recovered by *any person*, and these words were held in *Fletcher v. Hudson*, *ante*, p. 336, to enable any person to recover it, whether he was aggrieved or not, and whether or not he had obtained the leave of the Attorney-General under section 253, *ante*, p. 336. In so far as the proceedings for the penalty are concerned, the consent of the Attorney-General must now be obtained. See also the Public Health (Members and Officers) Act, 1885 (48 & 49 Vict. c. 53), *post*, which contains *further* amendments of the law.

THE PUBLIC HEALTH AND LOCAL GOVERNMENT
CONFERENCES ACT, 1885.

(48 & 49 VICT. CAP. 22.)

An Act to provide for Expenses incurred in relation to Conferences of Local Authorities. [25th June, 1885.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. **1.** This Act may be cited as the Public Health and Local Government Conferences Act, 1885.

Expenses of local

2. Any local authority may, when empowered by and subject to any regulations made by the Local Government Board in that behalf (which

regulations the said Board is hereby authorised from time to time to make, vary, or rescind), pay the reasonable expenses of any member or members or clerk to the local authority attending any conference or meeting of members of local authorities held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference, and may charge the amount to any rates applicable to the general purposes of the Public Health Act, 1875, within their district. Section 2.
authorities
may be
allowed.
38 & 39 Vict.
c. 55.

The foregoing enactment is simply a repetition, *mutatis mutandis*, of the Poor Law Conferences Act, 1883 (46 Vict. c. 11). An order has been made under it dated 13th May, 1891, the text of which will be found in Appendix II., *post*.

3. Expressions used in this Act have the same respective meanings as they have in the Public Health Act, 1875, save and except that in England the term "local authority" shall not mean or include the urban authority of any borough. Interpre-
tation.

In other words, the Act applies only to rural authorities and to urban authorities not being borough councils. (See section 6 of the principal Act, p. 24.) It does not apply to a town council who are the urban authority in their borough.

4. In the application of this Act to Ireland—

(a.) The term "Local Government Board" shall mean the Local Government Board for Ireland :

Act to apply
to Ireland.

(b.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875 : 41 & 42 Vict.
c. 52.

(c.) The expression "local authority" shall mean rural sanitary authority and urban sanitary authority.

THE PUBLIC HEALTH (SHIPS, &c.) ACT, 1885.

(48 & 49 VICT. CAP. 35.)

An Act to amend the Public Health Act, 1875, in relation to Ships and Port Sanitary Authorities. [31st July, 1885.]

WHEREAS it is expedient to amend the provisions of the Public Health Act, 1875, relating to ships and port sanitary authorities : 38 & 39 Vict.
c. 55.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health (Ships, &c.) Act, 1885, and shall be construed as one with the Public Health Act, 1875, in this Act referred to as the principal Act. Short title.

2. Section one hundred and ten of the principal Act shall have effect not only for the purpose of the provisions of that Act relating to Amendment
of section 110

Section 2. nuisances, but also for the purpose of such of the provisions of that Act relating to infectious diseases and hospitals as are referred to in the schedule to this Act.

of the Public Health Act, 1875.

Section 110, as amended, will now read as follows :—For the purposes of the provisions of this Act relating to nuisances, and also for the purpose of such of the provisions of this Act relating to infectious diseases and hospitals as are contained in sections 120, 121, &c. (see the schedule, *post*), any ship or vessel lying in any river, harbour, or other water within the district of a local authority, shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river, harbour, or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board, and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying. The master, or other officer in charge of any such ship or vessel, shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel. This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government. See the notes to this section, *ante*, p. 129. The provisions of some of the later Public Health Acts are expressly extended to ships. See, for instance, 52 & 53 Vict. c. 72, s. 13, *post*.

Constitution of permanent port sanitary authorities.

3. In any case in which the Local Government Board are by the principal Act authorised permanently to constitute a port sanitary authority by provisional order, they may permanently constitute a port sanitary authority by order.(a)

Every order made under this section shall specify a day on which it shall come into operation in the event of its not becoming a provisional order, as hereinafter provided, and at least four weeks before such day a copy of it shall be sent by the Local Government Board to every riparian authority(b) which is by the order or otherwise required to contribute to the expenses of the port sanitary authority,(c) and if before such day notice in writing shall be received by the Local Government Board from any such riparian authority objecting to the order, and such notice is not withdrawn before such day, the order shall be deemed to be a provisional order(d) duly made by the Local Government Board under the principal Act, and in the event of its being confirmed by Parliament shall come into operation on such day as may be provided in that behalf in the Act confirming it.

Any order made under this section may, if the same has not become a provisional order, be repealed, altered, or amended by any subsequent order made by the Local Government Board.

(a) Section 287 of the principal Act enabled the Local Government Board by provisional order permanently to constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in England, or the waters of such port, or any conservators, commissioners, or other persons having authority in or over such port or any part thereof (which local authority, conservators, commissioners, or other persons are in the Act referred to as a "riparian authority") the sanitary authority of the whole of such port or of any part thereof (in the Act referred to as the "port sanitary authority"). The Local Government Board were also empowered by provisional order permanently to constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and to prescribe their joint action; or by forming a joint board consisting of representative members of any two or more riparian authorities in the same manner as is by the Act provided with respect to the formation of a united district. And the Board were further empowered by provisional order permanently to constitute a port sanitary

Note to
Section 3.

authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports or any part thereof. (See the section, *ante*, p. 384.)

The effect of the above amendment is to abolish the necessity for a provisional order in the foregoing cases, and to enable the Board in each of the cases to permanently constitute a port sanitary authority by an order which will require no confirmation by Parliament. The orders made by the Board will be binding and conclusive (section 295, *ante*, p. 389).

(b) See the definition of a riparian authority in section 287, *supra*.

(c) As to the expenses of a port sanitary authority and the mode in which contributions are obtained from the several riparian authorities, see section 290, *ante*, p. 386.

(d) In other words, section 387 will apply as it originally stood, and the Local Government Board may then make an order temporarily constituting the port sanitary authority pending the confirmation of the provisional order. As to the making of provisional orders, see section 297, *ante*, p. 391.

SCHEDULE.

Sections 120, 121, 124, 125, 126, 128, 131, 132, and 133 of the Public Health Act, 1875.

The following are the words of the above sections as applied by this Act :—

Section 120 (*ante*, p. 141).—Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any *ship* or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the *master or other officer in charge* of such *ship* or part thereof, requiring him to cleanse and disinfect such *ship* or part thereof and articles within a time specified in such notice. If the person to whom notice is so given fails to comply therewith he shall be liable to a penalty of not less than one shilling, and not exceeding ten shillings, for every day during which he continues to make default; and the local authority shall cause such *ship* or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the *master or other officer in charge of such ship* in default in a summary manner. Where the *master or other officer in charge of such ship* or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such *master or other officer*, with his consent, cleanse and disinfect such *ship* or part thereof and articles, and defray the expense thereof.

Section 121 (*ante*, p. 142).—Any local authority may direct the destruction of any bedding, clothing, or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Section 124 (*ante*, p. 143).—Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed by order of any justice to such hospital or place at the cost of the local authority. An order under this section may be addressed to such constable or officer of the local authority as the justice making the same may

Schedule. think expedient ; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

It will be seen that this section already applied to ships, but the new Act makes clear what authorities may act under it. (See section 2, *ante*.)

Section 125 (*ante*, p. 144).—Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital, so long as may be necessary, any person brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

See the remarks on section 124, *supra*.

Section 126 (*ante*, p. 144).—Any person who—

- (1.) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street, public place, shop, inn, or public conveyance, or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering, or,
- (2.) Being in charge of any person so suffering, so exposes such sufferer ; or,
- (3.) Gives, lends, sells, transmits, or exposes without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds ; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance. Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected.

The application of this section to ships is not clear. It does not appear to have any bearing upon persons or things in ships beyond what it had before the Act.

Section 128 (*ante*, 146).—Any person who knowingly lets for hire any *ship* or part of a *ship* in which any person has been suffering from any dangerous infectious disorder, without having such *ship* or part of a *ship* and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds.

Section 131 (*ante*, p. 148).—Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception ; or contract for the use of any such hospital or part of a hospital or place of reception ; or,

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

Two or more hospital authorities may combine in providing a common hospital.

Section 132 (*ante*, p. 150).—Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

Schedule.

Section 133 (*ante*, p. 151).—Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

THE PUBLIC HEALTH (MEMBERS AND OFFICERS) ACT, 1885.

(48 & 49 VICT. CAP. 53.)

An Act to amend the Public Health Act, 1875, with respect to the Members and Officers of Local Authorities. [6th August, 1885.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health (Members and Officers) Act, 1885, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

Short title.
38 & 39 Vict.
c. 55.

2. Notwithstanding anything in the hundred and ninety-third section of the principal Act, (*a*) or any similar restrictions in any local Act, to the contrary, it shall not be unlawful for any officer or servant appointed or employed under the principal Act or local Act by the local authority to be concerned or interested in any contract with the local authority made with such consent or approval as is hereinafter mentioned for the sale, purchase, leasing, or hiring of any lands, rooms or offices, (*b*) or to be concerned or interested in any contract with the local authority as a shareholder in any joint stock company, (*c*) and no officer or servant of a local authority shall be incapable of holding any office or of being employed under the principal Act or local Act, or be liable to any penalty by reason only of his having been concerned or interested either before (*d*) or after the passing of this Act in any such contract as aforesaid. No such contract as aforesaid shall be made after the passing of this Act, or approved if made before the passing of this Act, for the sale, purchase, leasing, or hiring of any lands, rooms, or offices except with the consent of two-thirds of the number of the members of the local authority present (*e*) at a meeting held after seven clear days' notice shall have been published in some newspaper circulating in the neighbourhood, and after notice shall have been sent in writing to every member stating the

Amendment
of section 193
of the Public
Health Act,
1875.

Section 2. nature of the contract, and the time and place of the meeting at which the question is to be considered.(f)

(a) Section 193 (*ante*, p. 265) prohibited officers or servants appointed under the Public Health Act, 1875, from being in anywise concerned or interested in any bargain or contract made with such authority for any of the purposes of the Act. If any officer or servant was so concerned or interested, he was to be incapable of afterwards holding or continuing in any office or employment under the Act, and was to forfeit and pay the sum of 50*l.*, which might be recovered by any person, with full costs of suit, by action of debt. In *Fletcher v. Hudson*, 5 Ex. D. 287; 49 L. J. Ex. 783; 43 L. T. (N.S.) 404; 45 J. P. 5, it was laid down by BRAMWELL, B., that the penalty under section 193 might be recovered by any person, although he was neither a party aggrieved nor had the consent of the Attorney-General under section 253 (*ante*, p. 336). To meet this decision the 47 & 48 Vict. c. 74, s. 2 (p. 476), provided that proceedings for the recovery of any penalty under section 193 should not be taken without the consent in writing of the Attorney-General. In other respects, however, section 193 remained in full force. In *Todd v. Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278, it was held that an officer of a local board, who was a shareholder in a gas company having a contract with the board for the lighting of the streets, was, so long as the contract existed, interested in a bargain or contract with the board within the meaning of section 193, and if the contract was capable of producing any profit to the shareholders of the company, he was liable to the penalty imposed by that enactment. In another case, also decided by the Court of Appeal (*Burgess v. Clark*, 14 Q. B. D. 735; 33 W. R. 269; 49 J. P. 388), it was held that a demise of rooms was a bargain or contract within the meaning of section 193, and that if an officer, employed by a local board, let rooms to the board at a rent payable to him, although the rooms were used by the board in the transaction of its business, he became liable to the penalty; for the rent could not be considered as an *allowance* in addition to his salary under sections 189, 193, being unconnected with the performance of any services in the course of his employment under the board. It was to meet these and similar cases that the present statute has been passed. It is to be remembered that the decision in *Todd v. Robinson*, 12 Q. B. D. 530; 53 L. J. Q. B. 251; 50 L. T. (N.S.) 298; 32 W. R. 858; 48 J. P. 692, remains unaffected by this Act. It decides that when any penalty is recovered under the section the Crown cannot remit the penalties under 22 Vict. c. 32, as that Act relates only to persons upon whom a penalty was imposed by judicial authority.

- (b) This meets the case of *Burgess v. Clark*, *supra*.
- (c) This meets the case of *Todd v. Robinson* (No. 1), *supra*. The words "joint stock company" will apparently apply to every joint stock company, however formed.
- (d) The effect of this provision is to remove any liability or disqualification existing before the time of the passing of the Act by reason of an officer having entered into a contract of the kind mentioned in the section.
- (e) The necessary majority is two-thirds of those present (not of the whole board), whether voting or not.
- (f) The question of such a contract will in general arise at an ordinary meeting. In such a case the consideration of the question should be postponed until a day named, and the clerk should be instructed to insert the necessary advertisement, and to send a notice to every member stating the nature of the contract, &c. As to the sending of the notice, see section 267, *ante*, p. 359.

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The remaining sections of this Act were repealed by 56 & 57 Vict. c. 73, of which section 46 contains the provisions now in force. See the Act, *post*.

HOUSING OF THE WORKING CLASSES ACT, 1885.

(48 & 49 VICT. CAP. 72.)

An Act to amend the Law relating to Dwellings of the Working Classes.

[14th August, 1885.]

WHEREAS it is expedient to amend the law with reference to the provision of suitable dwellings for the working classes :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

The whole of this Act has been repealed by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), *post*, except sections 3, 7—9, and except section 10 so far as it relates to bye-laws authorised by those sections.

* * * * *

3. In the event of the removal from their present sites of Millbank Penitentiary or Pentonville Penitentiary, it shall be lawful for Her Majesty, on the recommendation of the Commissioners of Her Majesty's Treasury, and subject to such conditions as they may think reasonable, and in the event of the removal from its present site of Coldbath Fields Prison, or House of Detention, Clerkenwell, it shall be lawful for the justices of the peace for the county of Middlesex, if the justices think fit so to do, to sell and convey those respective sites or any part or parts thereof to the Metropolitan Board of Works, at a fair market price.

Section 3.
Provision
respecting
sites of
certain metro-
politan
prisons.

* * * * *

Amendment of General Sanitary Law, &c.

7. It shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority.

General duty
of local
authority
to enforce
the law.

This section is repealed, in so far as it relates to London, by the Public Health (London) Act, 1891, s. 142.

It is provided by section 299 of the Public Health Act, 1875, *ante*, p. 394, that if a local authority makes default in enforcing any of the provisions of that Act which it is their duty to enforce, the Local Government Board on complaint made may compel them to perform their duty. The present section is much wider in its operation. It applies to the execution not only of the Public Health Act, but of all laws relating to public health and local government. And as it makes such execution a statutory duty, the remedy of any person aggrieved will apparently be by *mandamus*. The only limitation of the section is that in the last clause, which seems to confine its operation to the execution of such laws as may be necessary to secure the proper sanitary condition of premises. An example of the operation of this section may be given by referring to the Public Health Act, 1875, s. 23, *ante*, p. 54. Under that section a local authority were originally bound to give notice to an owner to drain

**Note to
Section 7.**

his house effectually ; on his making default they were empowered (not bound) to execute the necessary works themselves. Now, apparently, by reason of the provision in the text, they have no option, but must execute the necessary works. Similar examples will readily occur to readers of the Public Health Act.

Amendment
of 38 & 39
Vict. c. 55,
s. 90.

8. Whereas under section ninety of the Public Health Act, 1875, the Local Government Board can declare that section to be in force within the district of a sanitary authority, and after the publication of notice of such declaration such authority is empowered to make bye-laws with respect to lodging-houses, and it is expedient to authorise every such authority to make such bye-laws without any declaration by the Local Government Board: Be it therefore enacted as follows :

Every sanitary authority shall have power to make bye-laws for the matters specified in section ninety of the Public Health Act, 1875.

Section 90 of the Public Health Act, *ante*, p. 106, enabled the Local Government Board to empower a local authority to make bye-laws as to houses let in lodgings, *i.e.*, houses other than common lodging-houses. The powers given by that section may now be exercised by any local authority without the intervention of the Local Government Board.

Tents and
vans used for
human
habitation.

9. (1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, *(a)* or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875 ; and the provisions of that Act shall apply accordingly. *(b)*

(2.) A sanitary authority may make bye-laws *(c)* for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same. *(d)*

(3.) Where any person duly authorised by a sanitary authority or by a justice of the peace *(e)* has reasonable cause to suppose either that there is any contravention of the provisions of this Act, or any bye-law made under this Act, in any tent, van, shed, or similar structure used for human habitation, or that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disorder, *(f)* he may, on producing (if demanded) either a copy of his authorisation purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence *(g)* of his being authorised as aforesaid, enter by day *(h)* such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such bye-law or a person suffering from a dangerous infectious disorder. *(f)*

(4.) For the purposes of this section "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

(5.) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings.

(6.) (i)

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Section 9.

(7.) Nothing in this section shall apply to any tent, van, shed, or structure, erected or used by any portion of Her Majesty's military or naval forces.

(a) It is not necessary that a nuisance, in order to be within this section, should also be injurious to health. See the note to the corresponding words in section 91 of the Public Health Act, 1875, *ante*, p. 108, and the case of *Bishop Auckland Local Board v. Bishop Auckland Iron Company*, 10 Q. B. D. 138; 52 L. J. M. C. 38; 48 L. T. (N.S.) 223; 31 W. R. 288; 47 J. P. 389.

(b) This is one of the most useful provisions of the Act. It enables local authorities to control a class of persons hitherto incapable of being reached through the sanitary laws. The effect of the sub-section is as follows:—It is now the duty of the local authority to inspect the district for the detection of the nuisances to which the section relates (Public Health Act, 1875, s. 92). Information of a nuisance under the sub-section may be given by any person aggrieved, or by two inhabitant householders, by an officer of the local authority, by the relieving officer, by any constable or police officer (section 93). The local authority must then serve a notice for the abatement of the nuisance on the occupier of the tent, van, &c., for there will rarely be an owner distinct from the occupier (section 94). On non-compliance with the notice complaint may be made to a justice (section 95), and an order may be made by a court of summary jurisdiction (section 96). It may be doubted whether a tent, van, &c., is a house or building within section 97.

(c) The making, authentication, &c., of these bye-laws is regulated by sections 182—187 of the Public Health Act, 1875, *ante*, p. 256. The provision of section 185 as to the printing and publication of bye-laws should be attended to. See the next section.

(d) Up to the time of writing the Local Government Board had not yet issued model bye-laws under this section. No doubt they will do so, however, and when they do, local authorities will do well to adopt the bye-laws without greater modification than may be absolutely necessary.

(e) Sanitary authorities may give a general authority to their officers or a special authority to any other person. A justice may also give a special authority; probably he will do so on application similar to an information.

(f) Note that all infectious diseases are not dangerous. The text refers to diseases such as smallpox or the like.

(g) If the authority is given by a justice it should be in writing, and the original should be produced.

(h) That is, between 6 A.M. and 9 P.M. See sub-section (4).

(i) This sub-section was repealed by the Public Health (London) Act, 1891, s. 142.

10. (1.) With respect to bye-laws authorised by this Act (a) or by the Labouring Classes Lodging Houses Act, 1851, (b) to be made—

Application of certain provisions as to bye-laws and local inquiries.

(a.) Sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such bye-laws are made by the Metropolitan Board of Works, or any nuisance authority in the metropolis; and

(b.) The provisions of the Public Health Act, 1875, relating to bye-laws, where such bye-laws are made by a sanitary authority, (c) shall apply to such bye-laws, and a fine or penalty under any such bye-law may be recovered on summary conviction.

(2.) For the purposes of the execution of their duties under this Act the Local Government Board may hold such local inquiries as the board see fit, and sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, relating to inquiries by such board shall apply.

This section was repealed by 53 & 54 Vict. c. 70, *post*, except in so far as it relates to bye-laws made under the sections of this Act remaining unrepealed.

**Note to
Section 10.**

- (a) See the last section.
 (b) This Act was repealed by the Housing of the Working Classes Act, 1890, *post*.
 (c) These provisions are contained in sections 182—87, *ante*, p. 256. *Quere*, whether this penalty is recoverable under the Public Health Act, 1875, or under the general provisions of the Summary Jurisdiction Acts.

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THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1886.

(49 & 50 VICT. CAP. 32.)(a)

An Act to amend the Contagious Diseases Animals Act, 1878.

[25th June, 1886.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(a) This Act transfers to the Local Government Board and the sanitary authorities, urban and rural, throughout the country, the powers and duties formerly exercised by the Privy Council and the local authorities under the Contagious Diseases (Animals) Act, 1878, respectively, with reference to dairies, cowsheds, and milkshops. The whole Act, except section 9 which is hereinafter set out, is now repealed by 57 & 58 Vict. c. 57.

* * * * *

9. (1.) The powers vested in the Privy Council of making general or special orders under section thirty-four of the principal Act(a) for the purposes in that section mentioned, are hereby transferred to and shall henceforth be exercisable by the Local Government Board; every such order shall have effect as if enacted in this section, and shall be published in such manner as the Local Government Board may direct, and the said Board may from time to time alter or revoke any such order.

(2.) For the purposes of the said section(b) and this section, and of any order in force thereunder,(c) the expression local authority, unless the context otherwise requires, in the metropolis has the same meanings as in the principal Act,(d) and elsewhere has the same meanings as in the Public Health Act, 1875.(e)

(3.) Any expenses incurred by a local authority in the metropolis in pursuance of section thirty-four of the principal Act, as amended by this section, shall be defrayed out of the local rate applicable to their expenses under the principal Act;(f) and any expenses so incurred by any other local authority shall be defrayed as if they were incurred in the execution of the Public Health Act, 1875, and in the case of a rural sanitary authority shall be deemed to be general expenses.(g)

(4.) The local authority and their officers,(h) for the purpose of enforcing the said orders and any regulations made thereunder,(i) shall have the same right to be admitted to any premises as the local authority, within the meaning of the Public Health Act, 1875, and their officers have under section one hundred and two of that Act, for the purpose of

Transfer
to Local
Government
Board of
powers of
Privy
Council .
under sec-
tion 34.

38 & 39 Vict.
c. 55.

Section 9.

examining as to the existence of any nuisance thereon ;(*k*) and if such admission is refused the like proceedings may be taken, with the like incidents and consequences as to orders for admission, penalties, costs, expenses, and otherwise, as in the case of a refusal to admit to premises for any of the purposes of the said section one hundred and two, and as if the local authority mentioned in the said Act included a local authority in the metropolis as defined in this section.(*l*)

Provided that nothing in this section shall authorise any person, except with the permission of the local authority under the principal Act, to enter any cowshed or other place in which an animal affected with any disease is kept, and which is situate in a place declared to be infected with such disease.(*m*)

(5.) The like penalties for offences against orders or regulations made for the purposes of section thirty-four of the principal Act as amended by this section may be imposed by the Local Government Board or local authority making the same, and such offences may be prosecuted and penalties recovered in a summary manner, and subject to the like provisions, as if such orders or regulations were bye-laws of a local authority under the Public Health Act, 1875, and as if the local authority mentioned in that Act included a local authority in the metropolis as defined in this section.(*n*)

(6.) Whereas under the powers of the principal Act the Privy Council have made an order known as the Dairies, Cow-sheds, and Milk-shops Order of 1885,(*o*) and certain authorities have made regulations under that order, or having effect in pursuance thereof ; and it is expedient by reason of the foregoing provisions of this section to make provision respecting such order and regulations : Be it therefore enacted as follows :—

(*a*.) The Dairies, Cow-sheds, and Milk-shops Order of 1885, and any regulations thereunder, or having effect in pursuance thereof, made by any local authority under the principal Act, other than the local authority of a county, shall be deemed to have been made respectively by the Local Government Board and by a local authority under this section ; and any such regulations made by the local authority of a county, within the meaning of the principal Act, shall, so far as they extend to the district of any local authority as defined in this section, be deemed to have been made by such local authority.(*p*)

(*b*.) So much of any register kept by the local authority of any county under the said order as relates to the district of any local authority as defined in this section, or a copy thereof, shall, as soon as may be after the passing of this Act, be delivered to the local authority by the local authority of the county.(*q*)

(*a*) The Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), s. 34, is as follows, substituting the Local Government Board for the Privy Council :—

The Local Government Board may from time to time make such general or special Orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them :—

(*i*.) For the registration with the local authority of all persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk.

**Note to
Section 9.**

- (ii.) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cowkeepers or dairymen.
- (iii.) For securing the cleanliness of milk-stores, milk-shops, and of milk vessels used for containing milk for sale by such persons.
- (iv.) For prescribing precautions to be taken for protecting milk against infection or contamination.
- (v.) For authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the Local Government Board may prescribe.

Under the above section, which is not repealed by 57 & 58 Vict. c. 57, the Privy Council issued the Dairies, Cow-sheds, and Milk-shops Order of 1885, as to the operation and administration of which see *post*.

(b) *i.e.*, of 41 & 42 Vict. c. 74, s. 34, *ante*.

(c) The only Orders in force are the Dairies, Cow-sheds, and Milk-shops Orders of 1885 and 1886, which are set out in Appendix II., *post*. The phrase "local authority" will in these Orders have the meaning here assigned to it.

(d) By the 41 & 42 Vict. c. 74, s. 7, "metropolis" had the same meaning as in the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120). In the City of London and the liberties thereof the Corporation of London were the local authority; elsewhere in the metropolis the Metropolitan Board of Works were the local authority. Under 57 & 58 Vict. c. 57, which repeals the Act of 1878 (except section 34), the local authorities in the City of London are the corporation, and outside the city the London County Council.

(e) Therefore outside the metropolis the local authority will be the urban and rural sanitary authorities of the several sanitary districts, urban and rural, in England and Wales. See the Public Health Act, 1875, sections 4, 5, and 6, *ante*, pp. 3 and 24.

(f) By the 41 & 42 Vict. c. 74, s. 9, and Schedule II., the local rate in the City of London and the liberties thereof is the consolidated rate; in the rest of the metropolis, the metropolitan consolidated rate. The expenses in question will continue to be paid out of these rates.

(g) The expenses incurred by an urban authority will be paid out of the general district fund, as to which see section 210 of the Public Health Act, 1875, *ante*, p. 278. The expenses of a rural authority, as here stated, will be general expenses (see section 229 of the same Act, *ante*, p. 308); in other words, they will fall on the district as a whole, and not upon special parts of it.

(h) The officers of the local authority who will have most to do with the administration of this Act will be the medical officer of health and the inspector of nuisances, especially the latter. In some districts the duties may be considerable, and the officers in question may have a fair claim to additional remuneration. Power is not given for the appointment of an officer for the express purpose of carrying the Act and Orders into execution, but as the local authorities may appoint as many officers as may be necessary for the purposes of the Public Health Act, 1875, they may avoid the difficulty by appointing officers under that Act, and assigning to such officers the new duties relating to dairies, cow-sheds, and milk-shops. It will be remembered that under section 190 of the Public Health Act, 1875, *ante*, p. 263, a rural authority may appoint more than one inspector of nuisances. The district may, if necessary, be divided for the purposes of the duties of several inspectors.

(i) As to the regulations which may be made by a local authority, see the Dairies, &c., Order of 1885, Art. 13, *post*.

(k) Section 102 of the Public Health Act, 1875, *ante*, p. 124, provides that the local authority or any of their officers shall be admitted into any premises (for the purpose of enforcing the said Orders and any regulations made thereunder) at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

(l) If admission is refused, the officer may give reasonable notice in writing of his intention to make complaint to a justice. This notice must be given to the person

having custody of the premises. He may then make a complaint *on oath* before a justice, and the justice may by order under his hand require the person having the custody of the premises to admit the local authority or their officer during the hours between 9 A.M. and 6 P.M., and if no person having custody of the premises can be found, the justice on oath made before him of that fact shall by order under his hand authorise the local authority or any of their officers to enter the premises during the hours aforesaid. The order remains in force until the work for which the entry was necessary has been done. Any person who refuses to obey the order is liable to a penalty not exceeding 5*l*. See the Public Health Act, 1875, sections 102, 103, *ante*, p. 124.

(*m*) Reference is here made to places declared to be infected by Orders under the Diseases of Animals Act, 1894. Such places can only be entered with the permission of the local authority entrusted with the administration of that Act, *i.e.*, in counties the county councils, and in boroughs the corporations or the committees appointed by such local authorities.

(*n*) By the Public Health Act, 1875, section 183, *ante*, p. 257, a local authority may, by their bye-laws, impose on offenders against such bye-laws penalties, not exceeding 5*l*. for each offence, and in the case of a continuing offence a further penalty not exceeding 40*s*. for each day after written notice of the offence from the local authority. The Dairies, Cow-sheds, and Milk-shops Order of 1885 contained no provision as to penalties, and some provision of the kind was necessary if the Order was to be enforced like bye-laws under the Public Health Act, 1875. To amend this defect the Local Government Board issued a general Order on the 1st November, 1886, whereby a person guilty of an offence against the Order is to be liable to a penalty of 5*l*., and a further penalty of 40*s*. for each day after written notice of the offence from the local authority. It is necessary to observe, however, that this Order does not in any way affect the regulations made by the local authority. These are to be enforced as bye-laws, and no penalty can be recovered in respect of breaches of them, except such as may be imposed by the regulations themselves. It is therefore necessary in every case to make provisions for penalties for such breaches, and where the local authorities avail themselves of previously existing regulations, these should be re-issued with the addition of some such provisions as are here suggested.

(*o*) See this Order, *post*.

(*p*) Existing regulations made under the Order will thus continue in force, but it will be advisable that they should be re-issued, making provision for the imposing of penalties for offences. No such provision was formerly necessary, for by section 61 of the Act of 1878, any person doing anything in contravention of the regulation of a local authority was guilty of an offence against that Act, and punishable under section 60 by a penalty not exceeding 20*l*. But under the last preceding sub-section, penalties must be imposed by the local authority as if such regulations were bye-laws; in other words, the regulations must themselves provide for penalties, otherwise it is very doubtful whether any penalty could be recovered. Since the issuing of the order of 1886 (*post*) this difficulty no longer exists in connection with penalties for offences against the Order of 1885.

(*q*) The old register will, so far as it relates to the district of any local authority, be the register of such authority, and will henceforth be kept by such authority.

THE LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 VICT. CAP. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.

[13th August, 1888.]

This Act established county councils throughout England and Wales, and transferred to them the administrative powers and duties formerly exercised and performed by justices in quarter sessions. In so far as it relates only to county councils, their election, powers, duties, and liabilities, it is beyond the scope of the present Work, and on these subjects the reader is referred to a separate work on the Act by one of the Editors; but it contains some provisions, and these of great importance, relating to sanitary authorities, and it is therefore necessary to set out these provisions, in order that the present volume may comprehend all statutory provisions such as are described in its title.

* * * * *

Section 11.

Entire maintenance of main roads by county council.
41 & 42 Vict. c. 77.

11. (1.) Every road in a county, (a) which is for the time being a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, (b) inclusive of every bridge carrying such road if repairable by the highway authority, (c) shall, after the appointed day, (d) be wholly (e) maintained and repaired by the council of the county in which the road is situate, and such council for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, (f) shall have the same powers and be subject to the same duties as a highway board, and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges, (g) and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions, (h) and for asserting the right of the public to the use and enjoyment of the road side wastes; (i) and the execution of this section shall be a general county purpose, and the costs thereof shall be charged to the general county account. (k)

(a) The expression "county" practically includes every place within an administrative county, *i.e.*, a county for which a county council is elected. It includes all quarter sessions boroughs other than county boroughs. See sections 35 (3) and 38 (3), *post*.

(b) The full text of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), is contained in the Appendix. See especially sections 13—17 of that Act, and the notes hereto, *post*. The administrative business formerly done by quarter sessions under that Act in respect of all powers vested by that Act in the county authority are transferred to the county councils by section 3 (viii.) of this Act.

(c) County bridges over which a main road is carried are not affected by this provision, and they remain repairable by the county authority, who for this purpose are the county council, the powers and duties of the justices in quarter sessions having been transferred to them by the Local Government Act, 1888, s. 3 (viii.). Nor will the liability to repair a bridge *ratione tenuræ* be transferred to a county council by virtue of this provision. But all bridges carrying main roads, if

reparable by the highway authority, become in effect county bridges by virtue of this provision.

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(d) The appointed day was the 1st April, 1889. See section 109 of this Act.

(e) Under 41 & 42 Vict. c. 77, s. 13, the county authority contributed only a moiety of the cost of maintenance. Now they are liable for the entire cost.

(f) Under 41 & 42 Vict. c. 77, s. 13, the county authority contributed only towards the cost of *maintenance*. It was held that the cost of removing snow, so as to render a main road passable, was an expense within the meaning of this term. *Amesbury Union (Guardians of) v. Wiltshire JJ.*, 10 Q. B. D. 480; 52 L. J. M. C. 64; 31 W. R. 521; 47 J. P. 184. The cost of scavenging and watering was also held to be within the term in so far as these were necessary for keeping the road in repair, as distinguished from scavenging and watering for purposes of public health and comfort. *Reg. v. Essex JJ.*, 4 T. L. R. 676; *Mayor, &c., of Burnley v. Lancashire County Council*, 54 J. P. 279; *Warminster Local Board v. Wiltshire County Council*, 25 Q. B. D. 450; 59 L. J. Q. B. 434; 62 L. T. (N.S.) 902; 38 W. R. 670; 54 J. P. 375. The House of Lords held that lighting was not "maintaining or repairing," in *Lanarkshire Road Trustees v. Fleming*, W. N. (1886), p. 180; 14 Ct. of Sess. Cas. (H. L.) 18. And in *Warminster Local Board v. Wiltshire County Council (supra)*, the court held that the cost of lighting main roads was not cast upon county councils by the wider language of the text. The words "improvement and enlargement of and other dealing" were inserted to meet the decision in *Leek Improvement Commissioners v. Staffordshire JJ.*, 20 Q. B. D. 794; 57 L. J. M. C. 182; 36 W. R. 654; 52 J. P. 403. It was there held that converting a macadamised road into a paved road did not come within the term "maintenance," but it would no doubt be an improvement or other dealing with the road within the meaning of the text. The Highway Act, 1864 (27 & 28 Vict. c. 101), ss. 47, 48, enumerates certain acts which are to be deemed improvements which a highway board may make, and the county council will have the same powers. These improvements include the conversion of any road that has not been stoned into a stoned road, the widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges, and the doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. As to the liability of the county council to repair foot-paths by the side of main roads, paved or pitched crossings, &c., see *Warminster Local Board v. Wiltshire County Council*, the effect of which is stated in the notes to the next sub-section.

(g) The county council have now all the powers formerly exercised by justices in quarter sessions as to the repair of county bridges. See section 3 (viii.) of this Act. If the county council make any alteration in the road such as to cause a nuisance, they will be liable in damages to any person injured thereby. See *Shill v. Gloucestershire County Council*, "Times," October 30th, 1893; 15 M. C. C. 454. As to the liability of a canal company under a Canal Act to repair the approaches to bridges carrying mains roads over the canal, see *Nottingham County Council v. Manchester, Sheffield, and Lincolnshire Railway Company*, 71 L. T. (N.S.) 430.

For the purpose of repairing main roads the county council have the same right under this section of taking gravel for repairs from a pit as a surveyor of highways. *Norfolk County Council v. Bittering Highway Surveyor*, 58 J. P. 497.

(h) The costs of prosecuting by indictment for obstructing a highway are properly chargeable as part of the cost of maintaining a highway. *Reg. v. Heath*, 29 J. P. 452. The late Master of the Rolls expressed an opinion that the Crown or the conservators of a road had by their agents a right to remove an obstruction, though a private person has no such right if he could pass without doing so, and that in any case a body or person who represented the public would have such a right after judicial determination that there was an obstruction. *Bagshaw v. Buxton Local Board*, 1 Ch. D. 224; 45 L. J. Ch. 260; 34 L. T. (N.S.) 112; 24 W. R. 231; 40 J. P. 197.

(i) The highway is presumably the entire space between the fences which has been dedicated to the public and is capable of being used for passage. *Reg. v. United Kingdom Telegraph Company*, 3 F. & F. 73; 9 Cox C. C. 114, 174; 31 L. J. M. C. 166; 2 B. & S. 647; 6 L. T. (N.S.) 378; *Turner v. Ringwood Highway Board*, L. R. 9 Eq. 418; *Nicol v. Beaumont*, 53 L. J. Ch. 853; 50 L. T. (N.S.) 112. But the highway does not include an open and unenclosed ditch by the side of it. *Field v. Thorne*, 20 L. T. (N.S.) 563; 33 J. P. 727; nor any part of the unenclosed land adjoining a highway which had never been dedicated as part of the highway though

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within fifteen feet of the centre of the road. *Easton v. Richmond Highway Board*, L. R. 7 Q. B. 69; 41 L. J. M. C. 25; 25 L. T. (N.S.) 586; 36 J. P. 485. And see *Robinson v. Cowpen Local Board*, 63 L. J. Q. B. 235; 9 R. 858. The provision in the text appears to imply that the county council will have the same powers over and in respect of roadside wastes between the fences as they have with respect to the rest of the highway. But it is submitted that they have no powers or rights over roadside wastes which do not form part of the highway and which remain private property as before. As to the vesting of the roadside wastes in the county council under sub-section (6), see *Curtis v. Kesteven County Council*, cited in the notes to that sub-section.

(k) A general county purpose is defined to mean a purpose for which the county council are authorised to assess the whole administrative county for contributions. Section 68 (2).

(2.) Provided that any urban authority (a) may, within twelve months after the appointed day, (b) or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and, for the purposes of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, (c) shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, (d) and the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road. (e)

(a) Section 100 defines the expression "urban authority" to mean until the establishment of district councils an urban sanitary authority; and after their establishment, the district council of an urban county district.

(b) The appointed day was the 1st of April, 1889 (section 109).

(c) As to these words, see note (f) to the preceding sub-section.

(d) In urban districts all streets repairable by the inhabitants at large are vested in the urban sanitary authorities by section 149 of the Public Health Act, 1875, *ante*, p. 169. By that section they may cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired, as occasion may require. They may also from time to time cause the soil of any such street to be raised, lowered, or altered, as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers. As to the meaning of the word "vest," see the cases cited in the notes to sub-section (6), *infra*. By section 144 of the Public Health Act, 1875, every urban authority have all the powers, duties, authorities, and liabilities of surveyors of highways under the Highway Acts, and all the powers, &c., given by these Acts to the inhabitants of a parish in vestry assembled. See the notes to this section, *ante*, p. 157.

(e) This provision has given rise to a good deal of discussion. It has been suggested that by reason of the use of the word "towards," the county council are in no case liable to pay the entire cost. But it is submitted that this is not the correct interpretation of the section. The county council are presumably bound to pay the entire cost which they would have had to bear under sub-section (1) if the urban authority had not elected to retain the main roads. And the word "towards" was used to enable the council to dispute any charge which is improper or unreasonable. This interpretation is to some extent borne out by the judgments in *Warminster Local Board v. Wilts County Council*, 25 Q. B. D. 450; 59 L. J. Q. B. 434; 62 L. T. (N.S.) 902; 38 W. R. 671; 54 J. P. 375. The order in that case was settled after the judgments by CHARLES, J., and is to the following effect: (1) The county council is liable to make an annual payment towards the cost of the maintenance and repair and reasonable improvement connected with the maintenance and repair of all footpaths by the sides of main roads, whether these are gravelled, paved, asphalted, &c., and whether such footpaths are or are not footpaths which the turnpike trustees were exempted from repairing under 3 Geo. 4, c. 126, s. 112. (2) The county council are

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under the like liability as to paved or pitched crossings over main roads. (3) The county council are liable to contribute an annual sum towards the cost of scavenging, cleansing, and watering main roads, in so far as such scavenging and cleansing are necessary for maintenance and repair as distinguished from purposes of public health. (4) The county council are under no liability with respect to the lighting of main roads (see sub-section (11), *post*). (5) If the local authority alter the paving or flagging of the footways, as, for instance, by substituting flagging, pavement, wood, or asphalt for gravel or other substance, the county council are bound to make an annual payment in respect of such alteration, in so far as it is a reasonable improvement connected with maintenance and repair, the question whether it is reasonable in any particular case being, in case of dispute, settled by arbitration under sub-section (3). (6) The county council are not liable to make any payment in respect of the principal or interest of any money borrowed before the passing of this Act; but the court expressed no opinion as to moneys borrowed after that date. See further on this subject *In re Wiltshire County Council and Mayor, &c., of Marlborough*, 16 M. C. C. 121; *In re Bedford Urban Sanitary Authority, infra*, and *Matlock Urban District Council v. Derby County Council*, "Times," 27th July, 1895. In the former of these cases, the court held that although the whole burden might be cast upon the county council, that council were only bound to discharge their liability in the same way as the urban authority, so that if money was borrowed or capital expenditure incurred by the urban authority, the county council were only bound to pay the instalments or were entitled to spread the expenditure over a number of years. And it was further held that this sub-section did not forbid the recovery from the county council of expenses defrayed out of borrowed money.

(3.) The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may be determined by arbitration of the Local Government Board.

See section 63, *post*, which provides for arbitration by the Local Government Board. *In re Kent County Council and Sandgate Local Board*, [1895], 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 652; 59 J. P. 456; 11 T. L. R. 421.

The High Court has no jurisdiction to determine the principle upon which such annual sum is payable. *In re Bedford Urban Sanitary Authority* [1894], 2 Q. B. 786; 64 L. J. Q. B. 26; 71 L. T. (N.S.) 433; 58 J. P. 786; 10 R. 485.

(4.) The county council and any district council(*a*) may, from time to time, contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, (*b*) and, if the county council so require, the district council shall(*c*) undertake the same, and such undertaking shall be in consideration of such annual payment by the county council for the costs of the undertaking as may from time to time be agreed upon, or, in case of difference, be determined by arbitration of the Local Government Board; (*d*) and for the purposes of such undertaking the district council shall have the same powers and be subject to the same duties and liabilities as if the road were an ordinary road vested in them. (*e*)

(*a*) A district council is for the purpose of this section a highway authority, *i.e.*, an urban authority, highway board, or highway surveyor. See section 100, *post*.

(*b*) This contract may apparently be for a term of years, a year, or any less period. An agreement under this sub-section between a county council and a highway board does not take away from the former their rights and liabilities as the road authority under the Tramways Act, 1870. *Stockport and Hyde Highway Board v. Cheshire County Council*, 61 L. J. Q. B. 22; 65 L. T. (N.S.) 85; 39 W. R. 696; 55 J. P. 808.

The Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), contains further provisions enabling county councils and highway authorities to make agreements for the improvement, &c., of main roads, highways and bridges. See the Act, *post*.

(*c*) The highway authority have no option, if required by virtue of this provision, to undertake the maintenance, &c., of main roads. They must maintain and repair

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out of the funds in their hands, for the repair of highways in their district, and the payments made to them by the county council will be paid into the same fund.

(d) As to the arbitration, see section 63, *post*.

(e) A highway repairable by the inhabitants at large, if in an urban district, is vested in the urban authority. See sub-section (2), note (d), *ante*. But save in this case, a highway does not vest in a highway authority, and the words "vested in them" must here be read as equivalent to "subject to their control."

An urban authority is not liable to be indicted at common law for non-repair of a highway. *Reg. v. Poole (Mayor, &c., of)*, 19 Q. B. D. 602; 56 L. J. M. C. 131; 57 L. T. (N.S.) 485; 36 W. R. 239; 52 J. P. 84. But they may be indicted under section 10 of the Highway Act, 1878; *Reg. v. Wakefield (Mayor, &c., of)*, 20 Q. B. D. 810; 57 L. J. M. C. 52; 36 W. R. 911; 52 J. P. 422. The principle of these cases extends to all highway authorities.

(5.) Provided that in no case shall a county council make any payment to a district council towards the costs of such undertaking as respects any road, or towards the costs of the maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed.

This sub-section has reference both to an undertaking under sub-section (4), and to the maintenance of main roads by an urban authority under sub-section (2). As to arbitration in case of refusal to make a payment under this sub-section, see sub-section (9), *supra*.

(6.) A main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, (a) vest in the county council, (b) and where any sewer or other drain is used for any purpose in connection with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act. (c)

(a) This has reference to sub-section (2), *supra*. Where the urban authority retain the right of repairing, the road will remain vested in them as formerly. See sub-section (2), note (d), *ante*.

(b) See the cases decided with reference to the meaning and effect of the word "vest" as used in section 149 of the Public Health Act, 1875, *ante*, p. 157.

A main road was 3,746 yards long; the metalled part of the road was of a uniform width of 22 feet; the total width of the road between hedge and hedge varied from 65 to 95 feet. The unmetalled portion of the road was covered with grass, timber, and other growths. C., the plaintiff, was tenant for life of the whole of the strips of land by the side of the highways. The strips were let annually by the plaintiff to cottagers, two of whom were also plaintiffs. The defendants, the county council, contended that the strips were vested in them by the provisions of the text, and they let the herbage to L., a co-defendant. The plaintiffs claimed a declaration that C. was seised in fee of the strips, and entitled to the herbage, trees, and other growths thereon, and for an injunction restraining the defendants from cutting or removing the grass, trees, or other growths. It was held by NORTH, J., that the strips in question were "roadside wastes" within the meaning of sub-section (1), but were not

vested in the county council by the text, and he gave the judgment claimed without prejudice to the rights of the county council under the Local Government Act. *Curtis v. Kesteven County Council*, 45 Ch. D. 504; 63 L. T. (N.S.) 543; 60 L. J. Ch. 103; 39 W. R. 199.

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(c) Arbitration in manner provided by this Act is regulated by section 62 (2) and (3), *post*. It differs from arbitration of the Local Government Board under section 63, which is referred to in sub-section (3), *supra*.

(7.) Where a county council declare a road to be a main road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

This provision is in effect an amendment or proviso to the Highway Act, 1878, s. 15, which has been quoted in the note to sub-section (1), *ante*. As to arbitration, if dispute arises as to the condition of the road, see sub-section (9), *infra*.

(8.) If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council, is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper repair and condition, and the expenses of so doing shall be a debt of the said district council to the county council.

This provision applies only to main roads of which the repair has been undertaken under sub-section (4). It does not apply to main roads repaired by an urban authority under sub-section (2). As to arbitration in cases of dispute under this sub-section, see the next sub-section.

The expenses incurred, being hereby made a debt, will be recoverable by action in the High Court, or in the county court if less than 50*l*.

(9.) If any difference arises under this section between a county council and a district council as to the refusal of the county council to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a main road, or as to any notice given to the district council by the county council to place a road in proper repair and condition, such difference shall, if either council so require, be referred to the arbitration of the Local Government Board.

The differences here referred to are those which may arise under sub-sections (5), (7), and (8).

The arbitration of the Local Government Board is regulated by section 63, *post*.

(10.) The county council may, if they think fit, contribute towards the costs of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main road.

This is a new provision.

As to the meaning of the words "maintenance, repair, enlargement, and improvement," see the notes to sub-section (1).

The text uses the words "highway or public footpath," but a public footpath is to all intents and purposes a highway, and is repairable like any other highway. See per Lord ELLENBOROUGH, C.J., in *R. v. Salop*, 13 East, at p. 97.

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The contribution under this sub-section may be made subject to any such conditions for the proper maintenance and repair of such highways as be agreed on between the county council and the highway authority. See the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25 (3), *post*.

(11.) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main road in their district.

The result of this provision is that the county council are not liable to light the main roads in any case. In urban districts the power and duty devolve on the urban authority under sections 161, 162, of the Public Health Act, 1875. They may under these sections contract for the supply of gas or other means of lighting the streets, and if there is no company having statutory powers in their district they may themselves provide a supply of gas for public or private purposes. In the latter case they may obtain a provisional order under the Gas and Waterworks Facilities Acts. They may also purchase the undertaking of any gas company in their district.

In rural districts, unless urban powers are obtained by order of the Local Government Board under section 276 of the Public Health Act, 1875, the power and duty of lighting roads devolve on the parish council or parish meeting under the Lighting and Watching Act (3 & 4 Will. 4, c. 90), and the Local Government 1894, *post*.

An urban or rural sanitary authority may obtain a license or provisional order for the supply of electricity for public or private purposes. See the Electric Lighting Act (45 & 46 Vict. c. 56), which is set out in the Appendix, *post*.

(12.) Anything authorised or required by law to be done by or to a highway or road authority shall, as respects a main road maintained by a county council, be authorised or required to be done by or to that council ;(a) and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any main road in their district,(b) but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council.(c)

(a.) This provision will apparently confer upon a county council all the powers and liabilities of a highway surveyor or a highway board for the purposes of main roads.

(b) A sanitary authority may lay sewers and water mains in any road, and may break up roads for that purpose. Public Health Act, 1875, ss. 16, 54.

Among other authorities who may break up roads may be mentioned water companies under the Waterworks Clauses Act, 1847, ss. 28—34 ; gas companies under the Gasworks Clauses Act, 1847, ss. 6—12 ; tramway companies under the Tramways Act, 1870, ss. 26, 27, 30 ; electric lighting companies under the Electric Lighting Act, ss. 12, 13. All these Acts are set out in the Appendix, *post*.

(c) See the note to sub-section (8), *ante*.

(13.) Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section.

The 41 & 42 Vict. c. 77, s. 20, is as follows :—

“Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to

the extent only and in manner provided by section 13 of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expense of repairing the hundred bridges in the same hundred would have been raised and charged."

The following is an extract from a letter, dated 18th September, 1878, from the Local Government Board with reference to this section:—

"The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate."

By virtue of this provision as applied by the text the expenses of maintaining main roads may be made payable out of the hundred rate instead of the county rate, wherever 41 & 42 Vict. c. 77, s. 20, is in operation. The hundred rate is made and levied by the county council under section 3 (c). It appears, however, that the expenses of main roads in counties to which this section applies is a general county purpose. See *Reg. v. Dolby* [1892], 2 Q. B. 736; 61 L. J. Q. B. 826; 67 L. T. (N.S.) 619.

12. (1). After the appointed day, tolls shall cease to be taken on any road maintained and repaired by the Isle of Wight Highway Commissioners, under the Isle of Wight Highway Acts, 1813 and 1883, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to the Isle of Wight, and to every such road above mentioned, in like manner as if it were ceasing within the meaning of the said Act to be a turnpike road, and the Act of the session of the forty-fourth and forty-fifth years of the reign of Her present Majesty, chapter seventy-two, shall be repealed.

Roads and
tolls in Isle of
Wight.

44 & 45 Vict.
c. 72.

The highways in the Isle of Wight are regulated by 53 Geo. 3, c. xcii., and 46 & 47 Vict. c. cxxxvi. The Isle of Wight was exempted from the operation of the Highway Acts by 5 & 6 Will. 4, c. 50, s. 113; 25 & 26 Vict. c. 61, s. 7; 41 & 42 Vict. c. 77, ss. 2, 27; 44 & 45 Vict. c. 72. The text repeals the last-mentioned Act, which exempted the Isle of Wight from liability to contribute towards the county rate for the expenses of main roads. This exemption is now taken away, and the roads in the island will be repairable as main roads, subject to the proviso contained in the next sub-section.

(2.) Until provision is otherwise made by Parliament, or by a Provisional Order confirmed by Parliament, (a) the repair and maintenance of the said roads shall continue to be undertaken by the said commissioners, (b) and the county council for the county of Southampton shall pay such commissioners, in respect of the said repairs and maintenance, (c) and of the expenses of the commissioners, such sums as may be agreed upon, or, in case of difference, be settled by arbitration under this Act, (d) and the provisions of this Act with respect to main roads shall apply as if the commissioners were a district council who had undertaken the maintenance and repair of such roads. (e)

(a) As to the making of a Provisional Order, see section 87, *post*.

**Note to
Section 12.**

(b) The said commissioners were the Isle of Wight Commissioners mentioned in the preceding sub-section, appointed under 46 & 47 Vict. c. cccxvi., ss. 5—15. These commissioners were abolished by the Local Government Act, 1894, s. 25, *post*, and their duties under this section were transferred to the rural district councils. *In re the Isle of Wight Highway Commissioners*, 72 L. T. (N.S.) 569; 59 J. P. 438.

(c) The words “improvement, enlargement of, and others dealing with” are omitted here. As to the meaning of the term “maintenance,” see the note to section 11 (1), *ante*.

(d) As to arbitration under this Act, see section 62, *post*.

(e) See section 11 (2), *ante*. The language of this sub-section is very inaccurate. In the first place, the county is only to pay for repair and maintenance; in the second place, the arbitration is “under this Act,” not by the Local Government Board; so that section 11 (2) differs in both these particulars.

Adaptation of
Act to South
Wales roads.
7 & 8 Vict.
c. 91.

25 & 26 Vict.
c. 61.
27 & 28 Vict.
c. 101.

13. (1.) After the appointed day no county road rate shall be levied, and tolls shall cease to be taken on any road maintained and repaired by a county roads board in South Wales, in pursuance of the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to every county in South Wales as if the highway districts in that county had been constituted under the Highway Act, 1862, and the Highway Act, 1864, or one of those Acts, and shall apply to every such road as above mentioned, in like manner as if it were ceasing, within the meaning of the said Act, to be a turnpike road.

By 7 & 8 Vict. c. 91, in each of the six counties of South Wales—namely, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan—a county roads board was appointed, consisting of from six to twelve justices appointed by quarter sessions and certain *ex officio* members, to have the superintendence, control, and management of all turnpike roads in the county. They had power to continue existing toll gates and to erect others and to take tolls. They might discontinue tolls on any road, and thereupon such road became an ordinary highway. By the same Act the commissioners who were appointed by the Act “for consolidating and adjusting the turnpike trusts of South Wales” might mark out and define in each county districts, which, subject to the superintendence and authority of the county roads board, should be placed under the care and management of district roads boards. The members of these district boards were originally nominated by the commissioners out of persons possessing a prescribed qualification, all justices residing within the district being *ex officio* members; vacancies were from time to time filled up by the board, the elective members retiring by rotation. The officers of the district boards were appointed by the county roads board. The duties of a district board were to direct and superintend all matters and things relating to the maintaining, repairing, and draining of the turnpike roads in the district, and the execution of any work or improvement placed under their direction and superintendence by the county roads board. Each district board annually elected two members to serve on the county roads board. The tolls received were paid into the county roads fund, and if that were insufficient for the expenses payable out of it, the quarter sessions had to make a county road rate to supply the deficiency.

By 14 & 15 Vict. c. 16, the county roads board of each county was required to divide the county into highway districts for the separate management of the ordinary highways therein. For each district a highway board was to be appointed, consisting of the guardians elected for each parish in the district and the resident justices. The Act was repealed by 23 & 24 Vict. c. 68, but the repeal did not affect existing districts. The county roads board were empowered to alter districts and appoint surveyors for each district. All land or property which would otherwise have become vested in the surveyor of any parish under 5 & 6 Will. 4, c. 50, was transferred to the highway board, which took over the care and management of the ordinary highways. The expenses of maintenance, &c., are chargeable to each parish and levied by a highway rate. Subject to the provisions of the Act and later amending Acts, the 5 & 6 Will. 4, c. 50, applies to ordinary highways in South Wales.

The text abolishes county roads boards, and makes the roads formerly repairable by them main roads. Consequently they are now repairable by the county council under the provisions of section 11, *ante*, and that section will apply in all respects as if these roads had been main roads under the Highway Act of 1878.

**Note to
Section 13.**

(2.) On the appointed day every county roads board and district roads board (a) in each county shall cease to exist, and the property, debts, and liabilities of any such board shall be transferred to the county council, and that council shall be the successors of the county and district roads boards, and the provisions of this Act, with respect to the transfer of the property, debts, and liabilities of quarter sessions to county councils, and with respect to the officers and servants of quarter sessions, (b) shall apply as if they were herein re-enacted, and made applicable to the property, debts, liabilities, and officers of the said county and district roads boards.

(a) See the note to the preceding sub-section.

(b) The provisions of the Act as to transfer of debts, &c., and with respect to officers, are outside the scope of the present Work. The reader will find these provisions in the Editor's separate Work on the Local Government Act, 1888.

(3.) For the following purposes (that is to say) :

(a.) For giving effect to the said transfer of the property, debts, and liabilities, and for controlling the officers and servants transferred by this section to the county council, and otherwise winding up the affairs of the county and district roads boards ; and

(b.) For the purpose of the appointment of the surveyor of a highway board, the alteration of a highway district, and other purposes relating to highway boards ;

the county council of every county in South Wales shall have all the powers of a county roads board in a county under the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, so, however, that nothing shall confer on the county council any power to levy any toll or county road rate.

See generally the notes to sub-section (1) of this section.

14. (1.) On and after the appointed day (a) a county council shall have power in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), (b) in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district. (c)

Power to
county council
to enforce
provisions of
39 & 40 Vict.
c. 75.

(a) The appointed day was the 1st April, 1890 (s. 109).

(b) The full text of this Act is set out in the Appendix, *post*.

(c) Parts I. and II. of the Rivers Pollution Prevention Act, 1876, relate to pollution of streams by solid matters and sewage. Section 6 provides that proceedings shall not be taken under Part III. of the Act (which deals with manufacturing and mining pollution), save by a sanitary authority and with the consent of the Local Government Board. If the sanitary authority, on the application of a person interested, refuse to

**Note to
Section 14.**

take proceedings, such person may apply to the Local Government Board, who, after inquiry, may direct the sanitary authority to take proceedings. The Local Government Board are not to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures, are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. Any person against whom proceedings are proposed to be taken under Part III. of the Act, notwithstanding any consent of the Local Government Board, may object before the sanitary authority to such proceedings being taken, and the authority must, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The authority must thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority must determine, having regard to all the considerations to which the Local Government Board are by the section directed to have regard, whether such proceedings shall be taken or not. When any authority has taken proceedings under the Act, no other sanitary authority may take proceedings under this Act, until the party against whom the proceedings are intended has failed in reasonable time to carry out the order of any competent court under the Act. By section 8, every sanitary authority, subject to the restrictions in the Act, have power to enforce the provisions of the Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against the Act which causes interference with the due flow within their district of any stream, or the pollution within their district of any stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority. By section 13, two months' notice of proceedings under the Act must be given.

The provision in the text enables a county council to institute proceedings under the Rivers Pollution Prevention Act, in all cases in which that could be done by a sanitary authority, and, of course, they will be able to institute proceedings against any sanitary authority in respect of sewage pollution.

(2.) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

Proceedings under the Rivers Pollution Prevention Act, 1876, are instituted in the county court, subject to the power to remove them into the High Court in certain cases (section 10). Though the powers given by the Act are cumulative, and do not affect other remedies, such as these by way of indictment or injunction (section 16), yet the action in the county court seems to be the only proceeding which can be called "a prosecution under the said Act." It should be added that if default is made in complying with an order of the county court, a penalty not exceeding 50*l.* a day may be imposed, and such penalty is recoverable as a judgment debt (section 10).

(3.) The Local Government Board, by Provisional Order(*a*) made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order; (*b*) and the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented

by it, and for the audit of the accounts of such committee or body, Section 14. and their officers.

(a) A provisional order is made under section 87 of this Act, *post*.

(b) The powers of a county council under sub-section (1) are limited to their county. The text enables a joint authority to be appointed for several counties, so as to constitute one authority for an entire river and its tributaries, and that body may, therefore, prevent the pollution of a river at any point of its course.

By a provisional order made under this sub-section and duly confirmed by Act of Parliament the Local Government Board created a joint committee with power to prevent the pollution of the rivers Mersey and Irwell or the tributaries thereof. At the time of the making and confirmation of this order the Manchester Ship Canal was in course of construction, and it was held that after the canal was completed it was included under the words, the rivers Mersey and Irwell or the tributaries thereof. *Mersey and Irwell Watershed Joint Committee v. Mayor, &c., of Salford*, "Times," 17th May, 1895.

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17. (1.) The council of any county may, if they see fit, appoint and Power of county councils to appoint medical officer of health. pay a medical officer of health, or medical officers of health, who shall not hold any other appointment or engage in private practice without express written consent of the council.

The qualification of a medical officer of health is prescribed by the next section.

(2.) The county council and any district council(a) may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district council, on such terms as to the contribution by the district council to the salary of the medical officer, or otherwise, as may be agreed, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by a district council.(b)

(a) "District council" here means an urban or rural sanitary authority. See section 100, *post*.

(b) The medical officer of the county council will have the same powers within the sanitary district for which he will act by virtue of this provision, as if he had been a medical officer appointed by the sanitary authority under the Public Health Act, 1875, ss. 189, 190, *ante*, p. 260.

(3.) So long as such an arrangement is in force, the obligation of the district council under the Public Health Act, 1875, to appoint a medical officer of health shall be deemed to be satisfied without the appointment of a separate medical officer.

As stated in the note to the preceding sub-section, the district council is the sanitary authority, urban or rural, as the case may be. The Public Health Act, 1875, s. 189, *ante*, p. 260, requires an urban authority, and section 190 requires a rural authority, to appoint a medical officer of health. But they need not do so if they have made arrangements under the preceding sub-section for the services of the county medical officer in their district. Where a district extends into two counties, separate arrangements must be made with the county council of each; and it is submitted that if an arrangement is made with the council of one county only, a medical officer must be appointed in the ordinary way for the rest of the district.

18. Except where the Local Government Board, for reasons brought Qualification of medical officers of health. to their notice, may see fit in particular cases specially to allow, no

Section 18. person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery.

The Public Health Act, 1875, s. 191, *ante*, p. 263, simply required that a medical officer of health should be a legally qualified medical practitioner, *i.e.*, simply a person registered under 21 & 22 Vict. c. 90. A person might, before the 1st June, 1887, when the 49 & 50 Vict. c. 48, came into operation, have been registered though qualified for the practice of medicine only, or of surgery only. A medical officer of health must now possess the triple qualification, unless the Local Government Board grants a special dispensation, and this cannot be done in cases falling within the next sub-section.

A "county district" is an urban or rural sanitary district. See section 100, *post*.

The same medical officer may be appointed for two or more districts under section 191 of the Public Health Act, 1875, with the sanction of the Local Government Board. And by section 286 the Local Government Board may, by order, unite two or more districts in the same county for the purpose of appointing a medical officer of health. The same section provides that in case of illness or incapacity of the medical officer of health, a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

(2.) No person shall, after the first day of January, one thousand eight hundred and ninety-two, be appointed the medical officer of health of any county, (a) or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of fifty thousand or more inhabitants, (b) unless he is qualified as above mentioned, (c) and also either is registered in the medical register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, (d) or has been during three consecutive years preceding the year one thousand eight hundred and ninety-two, a medical officer of a district or combination of districts, with a population according to the last published census of not less than twenty thousand, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board. (e)

(a) The medical officer of a county is appointed under section 17, *ante*, p. 501.

(b) The districts here referred to are the county districts mentioned in sub-section (1), *i.e.*, urban and rural sanitary districts having a population of 50,000 or upwards.

(c) See sub-section (1), *supra*.

(d) The 49 & 50 Vict. c. 48, s. 21, provides that every registered medical practitioner to whom a diploma for proficiency in sanitary science, public health, or State Medicine has, after special examination, been granted by any college or faculty of physicians or surgeons, or university, in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council, or to the General Council, to deserve recognition in the medical register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered.

(e) The medical officer of health of the Local Government Board is appointed under 21 & 22 Vict. c. 97, s. 4; 34 & 35 Vict. c. 70. Inspectors are appointed under 10 & 11 Vict. c. 109, s. 19, and 34 & 35 Vict. c. 70, s. 2.

The 34 & 35 Vict. c. 70, is set out in full in the Appendix, *post*.

Power of
county council
as to report
of medical

19. (1.) Every medical officer of health for a district in any county shall send to the county council a copy of every periodical report of which a copy is for the time being required by the regulations

of the Local Government Board to be sent to the board, and if a medical officer fails to send such copy, the county council may refuse to pay any contribution, which otherwise the council would, in pursuance of this Act, pay towards the salary of such medical officer. Section 19.
officer of health.

Under the orders of the Local Government Board relating to medical officers of health, every medical officer is required to make an annual report to the end of December in each year, and a copy of such report is sent to the Local Government Board. See the text of these orders in Appendix II., *post*. In future a copy of every such report must be sent to the county council, otherwise the contribution which the county council would have to make under section 24 (2) of this Act towards the salary of the medical officer of health may be withheld.

(2.) If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter.

This representation will probably amount to a complaint to the Local Government Board, under section 299 of the Public Health Act, 1875, so as to enable the Board to compel the defaulting authority to perform the duty in which it has made default. Otherwise there is no other way in which the Local Government Board can take action, unless they can move for a *mandamus* in the first instance. Section 299 enables the Local Government Board, if satisfied of the alleged default after due inquiry, to make an order on the local authority for the performance of their duty, and to enforce this order by *mandamus*, or to appoint a person to perform the duty and recover the expenses from the local authority.

* * * * *

24. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (a) (in this Act referred to as local grants) will, by reason of the duties on the local taxation licenses, (b) and the probate duty grant, (c) being by this Act made payable to local authorities, cease, it is hereby enacted as follows:—

Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

(1.) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day. (d)

(a) These local grants were made out of funds provided by Parliament. They will no longer be made.

(b) These duties were formerly excise duties, but by section 20 of this Act they are now collected by the Commissioners of Inland Revenue, and paid into the Local Taxation Account at the Bank of England. The amount collected in each county is certified by the Commissioners, and paid under the direction of the Local Government Board to the council of that county.

(c) By section 21 of this Act the Commissioners of Inland Revenue were to pay into the Local Taxation Account fourth-fifth parts of one-half of the proceeds of the sums collected by them in respect of the probate duties. The sum so paid in was, until Parliament shall otherwise determine, to be distributed among the county councils of the several counties in England and Wales in proportion to the share certified by the Local Government Board to have been received by each county in the financial year ending 31st March, 1888, out of the grants theretofore made out of the Exchequer in aid of local rates. The Finance Act, 1894 (57 & 58 Vict. c. 30), s. 19, now pro-

**Note to
Section 24.**

vides that in substitution for the grant out of the probate duties under this Act, there shall be paid out of the proceeds of the estate duty derived from personal property, such sum as the commissioners, in accordance with the regulations made by the Treasury under this Act, may determine to be an amount equal to 1½ per cent. on the net value of such of the property in respect of which estate duty is leviable, as would, if that Act had not passed, have been chargeable with the duty imposed by section 27 of the Customs and Inland Revenue Act, 1881, on inland revenue affidavits, and this Act is to apply as if the sums so determined were the probate duty grant or one-half of the proceeds of the sums collected in respect of the probate duties (as the case requires) within the meaning of this Act.

(d) Under this and the subsequent provisions of this section it was held that the county council, in substitution for the Exchequer, were bound to pay out of the county fund local grants in respect of the period between 24th September, 1888, and the 1st April, 1889, though they did not come into existence until the latter date. *Re West Riding County Council*, 54 J. P. 533.

(2.) In substitution for local grants, the council of each county shall, from time to time, as from the said day, pay out of the county fund and charge to the Exchequer Contribution Account(a) the following sums, that is to say—

* * * * *

(c.) They shall pay to every local authority,(b) for any area wholly or partly(c) in the county, by whom a medical officer of health or inspector of nuisances(d) is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health Act, 1875, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts,(e) a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer(f) and not to the said local authority ; and

(a) This account is a separate account, which consists of the sums from time to time received by a county council in respect of the duties on the local taxation licenses and the estate duty grant.

(b) That is to say, every urban and rural sanitary authority. See section 100, *post*.

(c) As to areas partly in one county and partly in another, see sub-section (5), *infra*.

(d) The Public Health Act, 1875, s. 189, *ante*, p. 260, provides that every urban authority shall from time to time appoint fit and proper persons to be medical officer of health and inspector of nuisances. The same section also provides that, subject in the case of any officers any portion of whose salary is paid out of moneys voted by Parliament to the powers of the Local Government Board under the Act (section 191), the urban authority may pay to such officers such reasonable salaries, wages, or allowances as they may think proper, and subject as aforesaid, every such officer shall be removable by the urban authority at their pleasure. Section 190 provides that every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health and inspector or inspectors of nuisances. By section 191, a person shall not be appointed medical officer of health unless he is a legally qualified medical practitioner. (This provision, however, is now considerably modified by section 18, *ante*, p. 501, which requires in most cases a

Note to
Section 24.
—

more extended qualification.) Section 191 further provides that the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under the Act. Orders have been made by the Local Government Board prescribing the qualification, appointment, duties, &c., of medical officers of health and inspectors of nuisances. The text of these orders will be found in Appendix II., *post*.

(e) The medical officer must send to the county council a copy of every periodical report of which he is required to send a copy to the Local Government Board, and if he fails to do so the county council may withhold their contribution under the above section. See section 19, *ante*, p. 502.

(f) Section 27 (1) provides that where a county council are required to pay any sum into the Exchequer, such sum is to be deducted from the amount payable under the provisions of the Act out of the local taxation account to such county council, and is to be paid into Her Majesty's Exchequer.

* * * * *

(3.) A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section.

The effect of these sections has already been stated. The meaning of the above provision is that in the case of all medical officers of health and inspectors of nuisances, half of whose salaries are paid by the county council under sub-section (2) (c), the Local Government Board will have power by order to prescribe the qualification (subject to the provisions of section 18 of this Act), appointment, duties, salary, and tenure of office of such officers.

* * * * *

(5.) Where a sum is payable under this section to the guardians, authority, or officer of a union or other area, and such union or area is situate in more administrative counties than one, (a) a proportionate part only of the sum otherwise payable shall be paid by the council of each of such counties to the guardians, authority, or officer, and the Local Government Board shall certify the proportionate part due from the council of each such county.

(a) An urban district cannot now be situate in more than one county, by reason of section 50 (1) (6), *post*.

(6.) The guardians, authority, or officer to whom a sum is payable under this section, on the certificate of the Local Government Board, shall submit to the Board their claim to the payment in such manner, and produce such evidence and comply with such rules as the Board from time to time require or make, and the Board shall fix the amount due on the like principles, and may impose the like conditions for the payment thereof as before the passing of this Act.

(7.) The Local Government Board may, if they think fit, vary a certificate granted for the purposes of this section, but, unless so varied, it shall be conclusive.

Section 26.

Grant by
county
council
towards costs
of officers of
union.

26. (1.) After the thirty-first day of March next after the passing of this Act, every county council, (a) other than the London County Council, shall grant to the guardians of every poor law union, wholly or partly in their county, an annual sum for the costs of the officers of the union (b) and of district schools to which the union contributes; and, until Parliament otherwise determine, the said annual sum shall be such sum as the Local Government Board certify to have been expended by the guardians of each poor law union during the financial year ending the twenty-fifth day of March next before the passing of this Act on the salaries, remuneration, and superannuation allowances of the said officers (other than teachers in poor law schools), and on drugs and medical appliances.

(a) This includes the council of a county borough. See section 34 (1).
(b) In a Circular Letter dated the 10th of January, 1889, and issued by the Local Government Board to boards of guardians throughout the country, the following opinion as to the meaning of this expression is given:—

“The Act contains no definition of the expression ‘officers of the union’; but the words clearly do not include parochial officers or officers appointed for areas such as rural sanitary districts in which the jurisdiction of the guardians is not in all cases co-extensive with the union. In the opinion of the Board, the following officers cannot be regarded as officers of the union for the purposes of the grant; and care should be taken to exclude any expenditure of the guardians in respect of them:—

- Collectors of poor rates.
- Assistant overseers.
- Officers of rural sanitary authorities.
- Officers of school attendance committees.
- Superintendent registrars, and
- Registrars of births, deaths, and marriages.

“On reference to section 100 of the Act, it will be seen that the expression ‘officer’ is to be construed according to the definition of ‘officer,’ which is to include any ‘place, situation, or employment.’ (And see note to that definition, *post*.)

“In some instances officers, in respect of whose services in certain capacities no claim can properly be made against the grant, will have acted also in other capacities, and their salaries, remuneration, or superannuation allowances in the latter capacities will properly be chargeable on the grant. In these cases care should be taken to include only so much of the expenditure of the guardians as has been incurred on account of the services of these officers in the latter capacities.

“The board consider that the cost of the rations of officers may be included. The expenditure of the guardians for this purpose should be taken from the ‘Rations Account’ in the Union Ledger, with the necessary deduction in respect of teachers and assistant teachers.”

(2.) Where a poor law union is situate in more counties than one, the payment under this section to the guardians of the union shall be borne by the counties in which each portion of such union is situate, in proportion to the rateable value of that portion, ascertained on such day as the Local Government Board may fix.

* * * * *

General Provisions as to Transfer.

General
provisions
as to powers
transferred to
county
council.

28. (1.) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified, but, save as aforesaid, shall have and be subject to all the powers, duties, and liabilities which the quarter sessions, or any committee thereof, or

any justice or justices had or were subject to in respect of the business Section 28.
so transferred.

(2.) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, (a) either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned; (b) the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays, and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals. 38 & 39 Vict.
c. 17.

(a) The powers and duties transferred by this Act to county councils are those which constituted the administrative business of quarter sessions, and are enumerated in section 3, and those of justices out of session mentioned in section 7, *i.e.*, the licensing of theatres, and the execution as local authority of the Explosives Act, 1875.

(b) A district council is defined by section 100, *post*. In so far as relates to highways and main roads the term signifies a highway authority, but, save as aforesaid, it means an urban or rural sanitary authority. The effect of this provision is practically to enable a county council to delegate any of its powers, except the making of rates, to a sanitary authority.

(3.) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Court of Justice in such summary manner as subject to any rules of court may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question. Summary proceeding for determination of questions as to transfer of powers.

This is a useful provision, and has been put in operation in a considerable number of cases where questions have arisen as to the respective liabilities of sanitary authorities and county councils. The practice formerly was to prepare a special case signed by the chairmen of the disputing bodies, and then to apply to the court for leave to set down the case in the Crown Paper. See *Ex parte Staffordshire Quarter Sessions*, W. N. (1889), p. 183. Now, however, by a rule of the High Court dated 10th August, 1892, which came into operation on the 1st October, 1893, the procedure is to be by special case to be agreed on by the parties, or in default of such agreement to be settled by an arbitrator agreed upon by the parties or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers. The special case when settled is to be filed at the Crown Office Department at the central office of the Supreme Court, by the chairman of quarter sessions, the county council, or the local authority concerned, within eight days from the settlement thereof, and is to be put into the Crown Paper for argument as if it were a case stated by justices under

**Note to
Section 29.**

20 & 21 Vict. c. 43. Without attempting to give an exhaustive list of the reported cases decided under this section, the following may be mentioned:—*Ex parte Somerset County Council*, 58 L. J. Q. B. 513; 61 L. T. (N.S.) 512; 54 J. P. 182; 5 T. L. R. 712; *Ex parte Staffordshire Quarter Sessions*, 54 J. P. 72; 6 T. L. R. 45; *Ex parte West Riding County Council*, 54 J. P. 533; 6 T. L. R. 265; *Warminster Local Board v. Wilts County Council*, 25 Q. B. D. 450; 59 L. J. Q. B. 434; 62 L. T. (N.S.) 902; 38 W. R. 671; 54 J. P. 375; *Re Cardigan County Council*, 54 J. P. 468; *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566; *Ex parte Kent County Council and Dover* [1891], 1 Q. B. 389; 60 L. J. Q. B. 314; 60 L. T. (N.S.) 421; 55 J. P. 248; 7 T. L. R. 250; *Ex parte Leicestershire County Council* [1891], 1 Q. B. 53; 60 L. J. M. C. 45; 64 L. T. (N.S.) 25; 39 W. R. 160; 55 J. P. 87; 7 T. L. R. 61; *Re Salop County Council*, 65 L. T. (N.S.) 416; 56 J. P. 213; *Montgomeryshire County Council v. Pryce-Jones*, 57 J. P. 308; *Marlborough Town Council v. Wilts County Council*, 58 J. P. 213; *Cornwall County Council v. Truro Town Council*, 63 L. J. M. C. 60; 70 L. T. (N.S.) 354; 58 J. P. 299; 10 R. 595; *In re Bedford Urban Sanitary Authority* [1894], 2 Q. B. 786; 64 L. J. Q. B. 26; 71 L. T. (N.S.) 433; 58 J. P. 786; 10 R. 485; *Norfolk County Council v. Bittering Highway Surveyor*, 58 J. P. 497; *Notts County Council v. Manchester, Sheffield, &c., Railway Company*, 71 L. T. (N.S.) 430; *Herefordshire County Council v. Leominster Town Council* [1895], 1 Q. B. 43; 64 L. J. M. C. 26; 71 L. T. (N.S.) 576; 59 J. P. 38. But the court will not under the above section answer abstract questions on the construction of the Act. *Re Cardigan County Council, supra.*

* * * * *

PART II.

APPLICATION OF ACT TO BOROUGHs, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES.

Application of Act to Boroughs.

Certain large boroughs named in the schedule to be county boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June, one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself, shall, from and after the appointed day, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said schedule to be deemed for the purposes of this Act to be situate.

The provisions of this part of the Act as to its application to county boroughs and other boroughs is, for the most part, beyond the scope of the present Work. Accordingly, only those sections or parts of sections have been included here which affect the council of a borough regarded as an urban sanitary authority.

The council of a county borough will have all or nearly all the powers of a county council, but this will only affect their position as an urban authority to the extent hereinafter noticed.

Application of Act with modifications to county boroughs.

34.

(2.) On the appointed day there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and

* * * * *

approaches thereto, or parts thereof, situate within the borough as were Section 34.
previously repairable by the county or any hundred therein, and the
costs of the council in repairing such bridges and approaches, or parts
thereof, and in repairing any roads in the borough which by virtue of
this Act or any Act applied by this Act are main roads, shall be payable
out of the borough fund.

The council of the borough, who have the powers of a county council for most purposes, have the power of declaring roads to be main roads under the Highway Act of 1878. Roads so declared to be main roads, which were main roads before the passing of this Act, and roads which become main roads by virtue of section 13 of the Highway Act, 1878, must in a county borough be repaired at the expense of the borough fund, though the other highways in the borough may be repairable out of the general district rate under section 210 of the Public Health Act, 1875, *ante*, p. 293, by the council in their capacity of urban authority.

It should be observed that some bridges in the borough may already have been repairable by the council under section 119 of the Municipal Corporations Act, 1882. See *Reg. v. Southampton*, 17 Q. B. D. 424; 55 L. J. M. C. 158; 55 L. T. (N.S.) 322; 35 W. R. 10; 50 J. P. 773; *Reg. v. Southampton* (No. 2), 19 Q. B. D. 590; 56 L. J. M. C. 112; 57 L. T. (N.S.) 261.

* * * * *

(7.) The powers and duties of the county authority under the Allot- 50 & 51 Vict.
c. 48.
ments Act, 1887, shall, as respects the borough, continue to be exercised
and performed by the Local Government Board.

It is provided by the Allotments Act, 1887 (50 & 51 Vict. c. 48), s. 16, *post*, that for the purposes of that Act the county authority shall be any representative body elected by the inhabitants of the county which might be established under any future Act, and until such representative body shall be established, the powers and duties of the county authority should be exercised and performed by the Local Government Board. The county councils, therefore, are the county authorities under the Act, but this will not apply to county boroughs, in which the Local Government Board will continue to exercise jurisdiction as county authority.

See also the provisions in the Local Government Act, 1894, *post*, relating to the compulsory acquisition of land. It is provided by section 9 (18) of that Act, that that section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board, and shall be carried into effect by the council of the county borough.

35. In the case of a quarter sessions borough, not being one of the Application
of Act to
larger quarter
sessions
boroughs not
county
counties.
(*sic*.)
boroughs named in the Third Schedule to this Act, but containing,
according to the census of one thousand eight hundred and eighty-one,
a population of ten thousand or upwards, the following provisions shall,
on and after the appointed day, apply :

- (1.) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions hereinafter mentioned, be liable to be assessed to county contributions in like manner as the rest of the county.

In many cases, where the local authorities for the execution of Acts were in counties the quarter sessions, in boroughs the local authorities under the same Acts were

Note to Section 35. the borough councils. In these cases, while the powers of the quarter sessions are transferred to the county councils by this Act, the councils of the larger boroughs to which this section relates will, under the provisions in the text, retain their powers as local authorities.

* * * * *

41 & 42 Vict.
c. 77.

- (3.) Notwithstanding the last enactment^(a) the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting main roads,^(b) form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any main road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to main roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions :

(a) This has reference to sub-section (2), which provides that the borough shall not be liable to be assessed to county contributions for purposes to which it was not liable to be so assessed at the time of the passing of the Act.

(b) These provisions are set out in the Appendix, *post*. Formerly a quarter sessions borough was not a highway area, not being included in the definition of an urban authority in the Highway Act, 1878. Consequently, the provisions of that Act as to main roads did not apply to a quarter sessions borough. This will no longer be the case. Main roads in such a borough will vest in and be under the control of the county council under section 11 (1) and (6), unless the council claim the right to retain them under sub-section (2) of that section. And the other provisions of that section will apply as well within such a borough as in any other highway area.

- (4.) Provided that—

(a.) The borough shall be deemed to be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 ;(a) and the council of the borough shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making bye-laws respecting locomotives, and authorising locomotives to be used on any road within the borough ;(b) save that if any difference is made by such bye-laws or authority between any main road maintained by the county council and the other roads in the borough, such authority and bye-laws shall require the approval of the county council ; and

41 & 42 Vict.
c. 77.

(a) See the notes to the preceding sub-section.

(b) The Highway Act, 1878, s. 28, *post*, provides that the council of every borough having a separate court of quarter sessions may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used on any turnpike road or highway within the borough, or part of any such road or highway under such conditions (if any) as to them may appear desirable. By section 31, the council of a quarter sessions borough may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways within the borough, the hours being in all cases consecutive hours, and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge when they are satisfied that such use would be attended with danger to the public. Section 35 requires these bye-laws to be confirmed by the Local Government Board.

- (b.) The council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any main roads in the borough ; and Section 35.

This has reference to the claim which an urban authority may make under section 11 (2), *ante*, p. 492.

- (c.) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to the main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to make the said declaration which shall have the same effect as if made by the county council.

Immediately after this Act came into operation all roads which had been dis-
turnpiked since the 31st December, 1870, became main roads. No declaration was
necessary in the case of such roads. By the provision in the text the council of the
borough had until the 13th August, 1890, power to apply to the county council to
declare certain other roads to be main roads, *i.e.*, such roads as might be declared
main roads under section 15 of the Highway Act, 1878, *post*. The appeal to the
Local Government Board against the refusal of the county council is new.

A local inquiry is held by the Local Government Board under this Act in the same
manner as under the Public Health Act, 1875. (See section 87, *post*.)

* * * * *

38. Where a borough having a separate court of quarter sessions contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall after the appointed day apply, Application
of Act to
smaller
quarter
sessions
boroughs with
population
under 10,000.

* * * * *

- (2) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—
- (a.) As regards coroners ; and
 - (b.) As regards the appointment of analysts under the Acts relating to the sale of food and drugs ;(a) and
 - (c.) Under the Acts relating to—
 - (i.) Reformatory and industrial schools ; and
 - (ii.) Fish conservancy ; and
 - (iii.) Explosives ; and
 - (d.) Under the Highways and Locomotives (Amendment) Act, 1878 ;(b)

Section 38. Provided that the transfer by this section—

- (a.) Shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts ;(c) and
 - (b.) Shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882 :
- (a) By the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 10, *post*, analysts were to be appointed by the town council of every borough having a separate court of quarter sessions. Such appointments will still be made by the town councils of the larger quarter sessions boroughs, but they will no longer be made by the town councils of the boroughs to which this section applies.
- (b) These powers include those of authorising or licensing locomotives under sections 28 and 31 of the Act of 1878. See *ante*, p. 510.
- (c) The provisions of this Act as to existing officers and the continuance of existing contracts are contained in sections 118—120, 122, 125. The only officers affected by them whom it is here necessary to refer to are analysts of the boroughs, who by section 119 became officers of the county council and continue to hold office by the same tenure, on the same terms and conditions and with the like remuneration as formerly. If their office is abolished they are entitled to compensation under section 120, so also if their fees or salary are diminished.

41 & 42 Vict.
c. 77.

- (3.) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 :
- (4.) The council of the borough may within two years after the passing of this Act, apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be, main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council :

The foregoing sub-sections are similar to those in section 35 (3) and (4). See those sub-sections and notes thereto.

- (5.) The area of the borough shall for the purposes of the above-mentioned Acts and all the administrative purposes of the county council be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions :

This provision will not in any way affect the powers and duties of the borough council in their capacity of urban sanitary authority.

- (7.) It shall be lawful for Her Majesty the Queen, on petition from the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make such provision as to Her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all enactments and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply, as if such court of quarter sessions or commission of the peace, as the case may be, did not exist: Section 38.

In the event of the revocation of a grant of quarter sessions, any appeal which would otherwise be to the borough sessions, *e.g.*, under section 269 of the Public Health Act, 1875, *ante*, p. 363, would thereafter be to the quarter sessions of the county. Another result would be that the county justices would acquire concurrent jurisdiction with the borough justices, in the borough. (See the Municipal Corporations Act, 1882, s. 154.) If the commission of the peace is revoked, the county justices alone will have jurisdiction within the borough. In neither case, however, will the council as urban authority be affected.

- (8.) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if Her Majesty revokes the grant of a court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections:

- (9.) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

39. (1.) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

- (a.) To the police force of the borough, or
- (b.) To the appointment of analysts under the Acts relating to the sale of food and drugs, (a) or
- (c.) To the execution of the Contagious Diseases (Animals) Acts, 1878 to 1886, (b) or the Destructive Insects Act, 1877, or
- (d.) To gas meters, or
- (e.) To weights and measures, if the council exercise any jurisdiction in relation thereto,

Application of Act to all boroughs with population under 10,000.

41 & 42 Vict. c. 74.
47 & 48 Vict. cc. 13, 47.
49 & 50 Vict. c. 32.
40 & 41 Vict. c. 68.

shall cease, and subject to the provisions of this Act as to the members of the police force holding office on the said day, the area of the borough shall for all purposes of the Acts relating to the county police force, or

Section 39. other matters above in this section mentioned, form part of the county in like manner as if it were not a borough.

(a) It has been stated in the notes to the preceding section that analysts were appointed by the town councils of boroughs having a separate court of quarter sessions. They were also appointed by the town council of every borough which had under any general or local Act of Parliament or otherwise a separate police establishment. 38 & 39 Vict. c. 63, s. 10, *post*. No such appointments will in future be made by the councils of any such boroughs if they are within the provision in the text.

(b) These Acts are now repealed and consolidated by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), except the enactments mentioned in sub-section (2), *infra*, which contains an important qualification of this provision.

41 & 42 Vict.
c. 74,
49 & 50 Vict.
c. 32.

(2.) Provided that nothing in this section shall transfer to the county council any powers, duties, or liabilities under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886.

This proviso has reference to 49 & 50 Vict. c. 32, s. 9, which transferred to urban and rural sanitary authorities the powers of local authorities under 41 & 42 Vict. c. 74, s. 34, with reference to dairies, cowsheds, and milkshops. These sections will be found *ante*, p. 486, and the orders made under them are set out in Appendix II., *post*. The powers of the council of the borough, as an urban authority, under these sections and orders are preserved by the text.

* * * * *

PART III.

Boundaries.

Boundary of
county for
first election.

50. (1.) The first council elected under this Act for any administrative county(a) shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purposes of the election of members to serve in Parliament for the county: Provided always, that—

* * * * *

(b.) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of one thousand eight hundred and eighty-one.(b)

(a) An administrative county is simply an area for which a county council are elected, but the term does not include a county borough.

(b) The importance of this provision is not at first sight obvious; but when read with the next sub-section and section 59, sub-section (1), *post*, its effect is to transfer for all purposes to one county, an urban district which previously was situate in two counties. See *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566.

* * * * *

(2.) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for

which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of this Act the county of such county council. Section 50.

See the note to the preceding sub-section.

(3.) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4.) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form, for the purposes of this section, part of the county in which such place is situate.

* * * * *

52. (1.) The Local Government Board shall make provisional orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the order shall provide for the council of the borough becoming the district council, and the order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county; and if the population exceeds fifty thousand, the order may constitute the borough into a county borough, and make such provision as may be necessary for carrying this Act into effect as respects such county borough; and the provisions of this Act respecting county boroughs shall, subject to the provisions of the order, apply.

Provisional order as respects boroughs and urban sanitary districts in same area.

The foregoing provision applied only to fourteen exceptional cases: Banbury, Blandford Forum, Calne, Cambridge, Chippenham, Faversham, Folkestone, Launceston, Lyme Regis, Lymington, Morpeth, Oxford, St. Ives, and Wenlock. Provisional Orders have been issued dealing with all these districts.

(2.) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the order may provide for the appointment by such university or colleges of members on the district council.

(3.) A provisional order under this section shall not be of any effect until it is confirmed by Parliament.

* * * * *

Section 54.
Future alter-
ations of
boundaries.

54. (1.) Whenever it is represented by the council of any county or borough to the Local Government Board—

- (a.) That the alteration of the boundary of any county or borough is desirable ; or
- (b.) That the union, for all or any of the purposes of this Act, of a county borough with a county is desirable ; or
- (c.) That the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable ; or
- (d.) That it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough ; or
- (e.) That the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable ; or
- (f.) That the alteration of any area of local government(a) partly situate in their county or borough is desirable,

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry,(b) and may make an order(c) for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division.

(a) An area of local government would include an urban or rural sanitary district. But as an urban district cannot now be situated in two counties (see sections 50 and 59), its application to sanitary districts is limited to rural districts.

(b) Local inquiries are held as under the Public Health Act, 1875. See section 87, *post*, p. 525.

(c) This order will be provisional in the cases mentioned in sub-section (3). In other cases the order will take effect at once, and will be conclusive. See section 87, *post*, p. 525. As to the power formerly possessed by the Local Government Board to alter sanitary areas by Provisional Order, see the Public Health Act, 1875, s. 270, *ante*, p. 371. It will be observed that the provision in the text applies only to an area in two counties.

(2.) Provided that in default of such representation by the council of any county or borough before the first day of November, one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

(3.) Provided that if the order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

As to the making of Provisional Orders, see section 87, *post*, p. 525.

* * * * *

Future alter-
ation of
county dis-

57. (1) Whenever a county council is satisfied that a *primâ facie* case is made out as respects any county district(a) not a borough, or as

respects any parish, for a proposal for all or any of the following things ; Section 57.
that is to say—

- (a.) The alteration(b) or definition(c) of the boundary thereof ;
- (b.) The division thereof or the union thereof(d) with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish ;
- (c.) The conversion of any such district or part thereof, if it is a rural district, into an urban district,(e) and if it is an urban district, into a rural district,(f) or the transfer of the whole or any part of any such district from one district to another,(g) and the formation of new urban or rural districts ;(h)
- (d.) The division of an urban district into wards ;(i) and
- (e.) The alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,(k)

districts and parishes and wards and future establishment of urban districts.

the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government Department as may be prescribed,(l) and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order(m) for the same accordingly.

(a) The term county district includes an urban and a rural sanitary district. See section 100, *post*.

(b) The alteration of the boundary of a sanitary district might formerly have been effected by provisional order under section 270 of the Public Health Act, 1875, *ante*, p. 371. By that section the Local Government Board was empowered by provisional order (1) to dissolve any local government district, and merge it in some other urban or rural district or districts ; (2) to declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district ; or (3) to declare any portion of a local government district immediately adjoining a rural district to be included in such rural district. It should be observed that the text applies to urban districts other than local government districts, and is, therefore, of wider application than the provisions of the Public Health Act, 1875. An alteration in the boundary of a borough must be effected under section 54, *ante*, p. 516.

(c) Under section 272 of the Public Health Act, 1875, *ante*, p. 373, the Local Government Board have power, on the petition of the owners and ratepayers of any place situate in any rural district or districts not having a known and defined boundary to make an order as to the boundaries of the place. The provision in the text relates only to the definition of the boundary of a county district, not of a place in a county district. But the provision in the text will supersede section 278 of the Public Health Act, 1875, *ante*, p. 379, by which, on the application of a local board or improvement commissioners, the Local Government Board may settle any dispute as to their boundaries.

(d) See section 270 of the Public Health Act, 1875, *ante*, p. 371. The union here referred to is a permanent union for all purposes, not a union for special purposes under section 279 of the Public Health Act, 1875, which must still be made by provisional order.

(e) Formerly this was done by provisional order under section 271 of the Public Health Act, 1875.

(f) This was formerly done by provisional order under section 270 of the Public Health Act, 1875. See note (b), *supra*.

(g) This was formerly done as mentioned in the preceding note.

(h) This is a curious expression. At present the whole of the country is mapped out into urban and rural districts. The making of a place into an urban district

**Note to
Section 57.**

involves the taking of it out of some existing urban or rural district or districts, and this clause was hardly necessary.

(i) Under section 271 of the Public Health Act, 1875, *ante*, p. 372, the Local Government Board might by any order constituting a local government district divide such district into wards for the election of members of a local board. This provision will be superseded by the text, though it is not expressly repealed.

(k) See the preceding note.

(l) "Prescribed" means prescribed by the Local Government Board. See section 87, sub-section (4), *post*, p. 525.

(m) As to this order, see *infra*.

(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, (a) and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, (b) shall come into operation upon being finally approved by the county council. (c)

(a) The prescribed manner is the manner prescribed by the Local Government Board. See section 87, sub-section (4), *post*, p. 525.

(b) These cases are those mentioned in sub-section (1), clauses (d) and (e), *supra*.

(c) It is not required that the order of the county council shall be confirmed or approved by the Local Government Board or any other authority.

(3.) In any other case (a) the order shall be submitted to the Local Government Board; and if within three months (b) after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, (c) or any number of county electors (d) registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, (e) and determine whether the order is to be confirmed or not.

(a) That is to say, in the cases mentioned in clauses (a), (b), and (c) of sub-section (1), *supra*.

(b) This period is now reduced to six weeks. See the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 41, *post*.

(c) This will signify, in the case of an order affecting any urban or rural district, such district.

(d) County electors are the persons who are registered to vote in the election of county councillors. The total number of such electors in any district will be determined by the division register. The electoral divisions are by section 51, sub-section (2), to be framed, so far as possible, so that every division shall be a county district.

(e) Local inquiries are regulated by section 87, *post*, p. 525.

(4.) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

(5.) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

(6.) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses

of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament. **Section 57.**

(7.) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

It may be inferred from this provision that the above section will supersede the provisions of other statutes in respect of matters to which it relates. In particular, it will supersede those sections of the Public Health Act, 1875, already mentioned in the notes to sub-section (1).

* * * * *

59. (1.) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient. Supplemental provisions as to alteration of areas.

This will apply to orders made under sections 54 and 57, *ante*, p. 516.

(2.) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes, (a) whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other : Provided that—

(a.) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge, shall continue to be one county for the said purposes so far as it is one county at the passing of this Act ; and

(b.) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner ; but if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose ; and

(c.) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(a) One result of this provision is to transfer an urban district previously situated in two counties to that county which contained the largest portion of the population according to the census of 1881. The case of *Re Staffordshire and Derbyshire County Council*, 54 J. P. 566, may be mentioned as illustrating the effect of such a transfer.

* * * * *

(4.) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(a.) May provide for the abolition, restriction, or establishment, or extension, of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and

Section 59.

for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

- (b.) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and
- (c.) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and
- (d.) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and
- (e.) May adjust any property, debts, and liabilities affected by the scheme or order.

The provision as to the adjustment of property and liabilities seems to exclude the provisions of section 62, sub-section (2), *post*, for that sub-section only applies when no other mode of making the adjustment is provided by the Act.

(5.) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

Provisional orders are regulated by section 87, *post*, p. 525.

(6.) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. (a) Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, (b) either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act. (c)

(a) This provision will apply to orders made under sections 54 and 57, *ante*. Such orders may be amended by subsequent orders as above described.

(b) An order is provisional only if made under section 54, sub-section (3), and section 59, sub-section (6), *ante*.

(c) Such an amendment will be necessary in every case where an order affects a district subject to a local Act. As to what is a local and personal Act within the meaning of this sub-section, see *Reg. v. London County Council* [1893], 2 Q. B. 455; 63 L. J. Q. B. 4; 69 L. T. (N.S.) 580; 42 W. R. 1; 58 J. P. 21; 4 R. 529.

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government. **Section 60.**
General provision as to alteration of boundaries.

Urban and rural sanitary districts are areas of local government within the meaning of the above section. The object is to provide, as far as possible, that every area shall be a distinct area for all purposes, although, in the meantime, it may be subject to different governing bodies for different purposes.

* * * * *

62. (1.) Any councils and other authorities affected by this Act, or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Commissioners under this Act or the Local Government Board. Adjustment of property and liabilities.

The next sub-section provides for the settlement of differences in default of agreement. The above provision is supplemental to the order itself, which may provide for all or any of the matters mentioned in section 59 (4), *ante*.

The commissioners referred to in the text were appointed under section 61. Their term of office expired on the 30th June, 1892.

(2.) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment, or determining such difference, is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

See as to this arbitration, the next sub-section.

(3.) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily. 8 & 9 Vict. c. 18.

A single arbitrator is to be appointed. By the 8 & 9 Vict. c. 18, s. 25, his appointment is to be delivered to the arbitrator, and is to be deemed a submission to arbitration by

**Note to
Section 62.**

the parties. Neither party can revoke the appointment without the consent of the other. By section 26, if the arbitrator dies or becomes incapable, another may be appointed, and in such a case section 29 provides that the new arbitrator shall begin *de novo*. By section 32, the arbitrator may call for the production of documents by either party, and may examine witnesses on oath. By section 33, before he enters on the arbitration, he must make the declaration therein mentioned, and such declaration is to be annexed to the award. Any act of an arbitrator contrary to the declaration is a misdemeanour. By section 35, the arbitrator is to deliver his award in writing, and allow the parties to inspect it at any time. By section 36, the award may be made a rule of court. The award must be made within twenty-one days from the arbitrator's appointment, unless the time is extended as provided by section 31. By section 37, no award is to be set aside for irregularity or error in matter of form. The provisions in the Lands Clauses Acts (8 & 9 Vict. c. 18, s. 34, and 32 & 33 Vict. c. 18), as to costs, will not apply. The costs are to be determined by the arbitrator, who will, apparently, have a discretion in awarding them, and the text gives him full power to disallow any costs. See the sections of the Lands Clauses Acts *in extenso*, in the Appendix, *post*.

(4.) Any award or order made by the Commissioners, or any arbitrator under this Act, may provide for any matter for which an agreement might have provided.

As to what may be provided for by agreement, see sub-section (1), *supra*.

(5.) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund, or out of such other special fund as the council, with the approval of the Commissioners under this Act, or of the Local Government Board, may direct.

The expression "council" apparently includes a district council, *i.e.*, an urban or rural sanitary authority. See section 100, *post*.

(6.) The payment of any capital sum required to be paid for the purposes of the adjustment, or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock, or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury, or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or if the sum is raised by stock under a local Act, by such method as is directed by that Act.

(7.) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Arbitration
by Local
Government
Board.
31 & 32 Vict.
c. 119.

63. Where the Local Government Board are required, in pursuance of this Act, to decide any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the

enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act. Section 63.

For the purposes of the present Work, the chief cases in which differences are to be decided by the arbitration of the Local Government Board are those arising under section 11, sub-sections (3), (4), and (9) as to main roads. See also *In re Kent County Council and Sandgate Local Board* [1895], 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 652; 59 J. P. 456; 11 T. L. R. 421, where it was held that an arbitrator appointed under this section may be required to state a special case under the Arbitration Act, 1889, for the opinion of the High Court.

The provisions of the 31 & 32 Vict. c. 119, above referred to, are contained in sections 30—32 of that Act, which are set out in full in the Appendix, *post*. Under these, as applied by the above section, the Local Government Board may appoint an arbitrator whose award or decision may be that of the Board. The Board may fix the remuneration of the arbitrator. The costs of the arbitration are to be regulated by 22 & 23 Vict. c. 59, which places them in the position of the arbitrator. If the award does not otherwise determine, the costs of the arbitration and award are to be borne by the parties in equal shares.

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PART IV.

FINANCE.

* * * * *

Local Financial Year and Annual Budget.

73. (1) After the appointed day, not being more than three years after the passing of this Act, (a) the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year. Fixing of local financial year and consequent adjustments.

(a) The appointed day is defined by section 109, *post*.

(2.) All enactments relating to accounts of local authorities, or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

The above provision will apply to urban and rural sanitary authorities.

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PART V.

SUPPLEMENTAL.

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Regulations for Bicycles, &c.

85. (1.) The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act, 1878, and section twenty-Regulations for bicycles, &c.

Section 85. three, sub-section one, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make bye-laws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts, in so far as they give power to any local authority to make bye-laws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, *(a)* and bicycles, tricycles, velocipedes, and other similar machines *(b)* are hereby declared to be carriages within the meaning of the Highway Acts : *(c)* and the following additional regulations *(d)* shall be observed by any person or persons riding or being upon such carriage :—

(a.) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage ;

(b.) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriage way, every such person shall, within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

(2.) Any person summarily convicted of offending against the regulations made by this section shall, for each and every such offence, forfeit and pay any sum not exceeding forty shillings. *(c)*

(a) Section 26, sub-section (5), of the Highway Act, 1878, enabled a county authority to make bye-laws regulating the use of bicycles. Section 23 of the Municipal Corporations Act, 1882, enables the council of a borough to make bye-laws for the good rule and government of the borough, and for the prevention and suppression of nuisances not otherwise summarily punishable in the borough, and under this section bye-laws regulating the use of bicycles and tricycles were made in many boroughs. These bye-laws varied greatly, not only being different in different counties, but the county bye-laws being in many cases different from those in force in the various boroughs within the county, and these again from one another. The text repeals the above sections so far as regards the power to make bye-laws for bicycles, tricycles, &c., and substitutes a general enactment for the bye-laws previously in force.

(b) Section 26 of the Highway Act, 1878, referred only to bicycles, and it was generally understood that the county bye-laws did not extend to tricycles. The provision in the text avoids the possibility of doubt on the subject.

(c) It had already been held that a bicycle was a carriage within the meaning of the Town Police Clauses Act, 1847, s. 28, and that a person might be convicted under that section of furious driving of a bicycle. *Taylor v. Godwin*, 4 Q. B. D. 228 ; 43 J. P. 653. And see *McKee v. McGrath*, 30 L. R. Ir. 41. But in a later case it was held that a bicycle was not a carriage liable to toll under a Turnpike Act. *Williams v. Ellis*, 5 Q. B. D. 175 ; 42 L. T. (N.S.) 249 ; 44 J. P. 394. See, however, *Parkyn v. Priest*, 7 Q. B. D. 313 ; 64 L. J. M. C. 148 ; 30 W. R. 13 ; 45 J. P. 751. The text now provides that they shall be deemed to be carriages within the meaning of the Highway Acts. They will consequently be subject to the provisions of 5 & 6 Will. 4, c. 50, s. 78, which imposes penalties for such offences as negligently, or by wilful misbehaviour, causing hurt to any person, horse, cattle, or goods ; not keeping the left or near side of the road on meeting any other carriage, negligently, or by wilful misbehaviour, preventing the free passage of any person, carriage, &c. ; driving furiously so as to endanger the life or limb of any passenger.

(d) These additional regulations will be of universal application, and will supersede the provisions of the repealed bye-laws.

(e) This penalty will be recoverable by conviction on information before a court of summary jurisdiction.

Note to
Section 85.

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Adaptation of Acts.

* * * *

87. (1.) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries and provisional orders.

See the sections above referred to, *ante*, p. 389.

(2.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of provisional orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted and in terms made applicable thereto.

See the sections above referred to, *ante*, p. 391.

* * * *

(4.) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

See, for example, section 57, sub-sections (1) and (2), *ante*.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

As to the payment of these expenses, see section 298 of the Public Health Act, 1875, *ante*, p. 393.

* * * *

Savings.

* * * *

97. Nothing in this Act with respect to main roads shall alter the liability of any person or body of persons, corporate or unincorporate, not being a highway authority, to maintain and repair any road or part of a road.

Saving as to liability for main roads.

This section was inserted to preserve the liability of persons or corporations to repair roads which have or may become main roads, when such roads were previously

**Note to
Section 97.**

repairable by them *ratione tenuræ* or by prescription, or under an Act of Parliament, such as the Railways Clauses Acts, which impose on railway companies the duty of repairing roads in some cases.

* * * * *

Definitions.

Definition of
"written."

99. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction.

See also section 20 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Interpretation
of certain
terms in
the Act.

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them, that is to say:

The expression "county" does not include a county of a city or county of a town:

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties:

The expression "division of a county" in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division:

The expression "administrative county" means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough:

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts:

18 & 19 Vict.
c. 120.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city:

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions, and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882:

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the city of London, means the court of the mayor and aldermen in the inner chamber:

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part:

The expressions "parliamentary county," and "parliamentary elec-

45 & 46 Vict.
c. 50.

- tion," and "parliamentary voters," have the same meaning as in **Section 100.**
 the Registration Act, 1885, and the Acts therein referred to: 48 & 49 Vict. c. 15.
- The expression "Secretary of State" means one of Her Majesty's
 Principal Secretaries of State:
- The expression "Treasury" means the Commissioners of Her Majesty's
 Treasury:
- The expression "Bank of England" means the Governor and Company
 of the Bank of England:
- The expression "existing" means existing at the time specified in the
 enactment in which the expression is used, and if no such time is
 expressed, then at the day appointed to be for the purpose of such
 enactment the appointed day: (a)
- The expression "guardians" means guardians elected under the Poor ^{4 & 5 Will. 4,}
 Law Amendment Act, 1834, and the Acts amending the same, and ^{c. 76.}
 includes guardians or other bodies of persons performing under any
 local Act the like functions to guardians under the Poor Law
 Amendment Act, 1834:
- The expression "poor law union" means any parish or union of
 parishes for which there is a separate board of guardians:
- The expressions "district council" and "county district" mean
 respectively any district council established for purposes of local
 government under an Act of any future session of Parliament, and
 the district under the management of such council, and until such
 council is established, mean respectively—
- (a.) As regards the provisions of this Act relating to highways
 and main roads, a highway authority and highway area:
 and
- (b.) Save as aforesaid, an urban or rural sanitary authority
 within the meaning of the Public Health Act, 1875, and ^{38 & 39 Vict.}
 the district of such authority: ^{c. 55.}
- The expression "highway area" means, as the case may require, an
 urban sanitary district, (b) a highway district, or a highway parish
 not included within any highway or urban sanitary district:
- The expression "highway authority" means as respects an urban
 sanitary district, the urban sanitary authority, and as respects a
 highway district, the highway board, or authority having the
 powers of a highway board, and as respects a highway parish, the
 surveyor or surveyors of highways or other officers performing
 similar duties:
- The expression "urban authority" means, until the establishment of
 district councils as aforesaid, an urban sanitary authority; and
 after their establishment, the district council of an urban county
 district:
- The expression "person" includes any body of persons, whether
 corporate or unincorporate.
- The expression "rural authority" means, until the establishment of
 district councils as aforesaid, a rural sanitary authority; and after
 their establishment, the district council of a rural county district:
- Any expression referring to the value of any parish, borough, or area,
 as ascertained by the standard or basis for the county rate or
 contributions shall, where any rateable value has been fixed by
 agreement between the councils of any county and county boroughs,

Section 100.

be that value, and subject thereto shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate :

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions :

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities :

The expression "duties" includes responsibilities and obligations :

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose :

The expression "powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act :

The expression "expenses" includes costs and charges :

The expression "costs" includes charges and expenses :

The costs of assizes and of quarter and petty sessions include such of the following costs as are applicable; that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury lists, the costs of rewards ordered to be paid by the court, the costs of prosecutions, including the costs of the defendants' witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes, except in the case of prisoners committed for trial from the borough :

The expression "assizes" includes the Central Criminal Court :

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer :

The expression "office" includes any place, situation, or employment, **Section 100.**
and the expression "officer" shall be construed accordingly : (c)

The expression "the divisions of Lincolnshire" means the parts of
Holland, the parts of Kesteven, and the parts of Lindsey :

The expression "County and Borough Police Act, 1856," means the ^{19 & 20 Vict.}
Act of the session of the nineteenth and twentieth years of the _{c. 69.}
reign of Her present Majesty, chapter sixty-nine, intituled "An
Act to render more effectual the police in counties and boroughs in
England and Wales," and the expression "County and Borough
Police Acts" means the County and Borough Police Act, 1856, and
the Acts therein recited :

The expression "main road," when used in relation to the district of
any highway or road authority, means so much of the main road
as is situate within the district of such authority. (d)

In relation to the election of county councillors, the day of nomina-
tion shall be deemed to be the day on which the names of the persons
nominated are fixed on the town hall or other conspicuous place.

The foregoing section has been set out in full without attempting to eliminate those
definitions which may not be strictly applicable for the purposes of this Work.

(a) As to the appointed day, see section 109, *post*.

(b) It will be remembered that quarter sessions boroughs are now urban sanitary
areas within the meaning of the Highway Act, 1878. See sections 35 (3) and 38 (3), *ante*.

(c) In *Legg v. Stoke Newington Vestry*, "Times," 28th May, 1895, in actions for
compensation for pecuniary loss by abolition of office under a local Act, DAY, J.,
held that a sanitary inspector, clerk to the sanitary committee, messenger, hall
porter, and office boy, appointed by a vestry, were "officers" within the meaning of
the provisions for compensation and not merely servants.

(d) The provisions of the Act as to main roads, in so far as they are within the
scope of the present Work, are contained in sections 11, 34, 35, and 38, *ante*,
pp. 490, 508—513.

* * * * *

PART VI.

TRANSITORY PROVISIONS.

* * * * *

Appointed Day.

109. (1.) Subject as in this Act mentioned, the appointed day for ^{Appointed}
the purposes of this Act shall in each county be the first day of April ^{day.}
next after the passing thereof, or such other day, earlier or later, as the
Local Government Board (but after the election of county councillors
for such county on the application of the provisional council or county
council) may appoint, either generally or with reference to any particular
provision of this Act, and different days may be appointed for different
purposes and different provisions of this Act, whether contained in the
same section, or in different sections, or for different counties.

(2.) Any enactment of this Act authorising anything to be done by
the Commissioners of Inland Revenue or the Local Government Board,
or relating to the registration of electors, or to the elections, or to any
matter required to be done for the purpose of bringing this Act into
operation on the appointed day, shall come into effect on the passing of
this Act ; but, save as aforesaid, and save so far as there may be anything

Section 125. in the context inconsistent therewith, any enactment of this Act shall come into operation on the appointed day.

* * * * *

Savings.

* * * * *

Saving for
charters, local
Acts, &c.

125. Save so far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder, nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by Parliament which immediately before the passing of this Act was in force.

For an illustration of the effect of this section upon a local Act, see the case of *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566.

Repeals.

Repeal of
Acts.

126. All enactments inconsistent with this Act are hereby repealed :
Provided that—

- (1.) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act.
- (2.) This repeal shall not affect—
 - (a.) The past operation of any enactment hereby repealed nor anything duly done or suffered under any enactment hereby repealed ; or
 - (b.) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed ; or
 - (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
 - (d.) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

See also sections 11 and 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

THE PUBLIC HEALTH (BUILDINGS IN STREETS), ACT, 1888.

(51 & 52 VICT. CAP. 52.)

An Act to amend the Public Health Acts in relation to Buildings in Streets.
[24th December, 1888.]

38 & 39 Vict.
c. 55.

WHEREAS the provisions of the Public Health Act, 1875, with respect to bringing forward houses or buildings in streets are defective, and it is expedient to make further provisions in relation thereto :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

1. This Act may be cited as the Public Health (Buildings in Streets) Act, 1888, and this Act and the Public Health Act, 1875, and the Public Health (Water) Act, 1878, and the Public Health (Interments) Act, 1879, and the Public Health (Fruit Pickers Lodgings) Act, 1882, and the Public Health, 1875 (Support of Sewers), Amendment Act, 1883, and the Public Health (Confirmation of Bye-laws) Act, 1884, and the Public Health (Officers) Act, 1884, and the Public Health (Ships, &c.) Act, 1885, and the Public Health (Members and Officers) Act, 1885, may be cited together as the Public Health Acts, and this Act shall be construed as one with the Public Health Act, 1875. **Section 1.**
Short titles
and construc-
tion.

It is difficult to assign any reason for expressly stating that this Act is to be read with the Acts enumerated, the list of which, by the way, is by no means a complete one. The Act is simply a single enactment to replace section 156 of the Public Health Act, 1875, which, as the preamble states, had been found to be defective. Another list of the Public Health Acts will be found in the Short Titles Act, 1892 (55 & 56 Vict. c. 10).

2. In this Act, unless the context otherwise requires, words and expressions to which meanings are assigned by the Public Health Act, 1875, and have in this Act the same respective meanings. Interpreta-
tion.

The effect of this provision is to give words used in this Act the meanings assigned to them by the Public Health Act, 1875, s. 4, *ante*, p. 2.

3. Section one hundred and fifty-six of the Public Health Act, 1875, is, save as hereinafter mentioned, hereby repealed (*a*) and in lieu thereof it is hereby enacted that it shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building (*b*) in any street, (*c*) or any part of such house or building beyond the front main wall of the house or building on either side thereof in the same street, (*d*) nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same. Buildings not
to be brought
forward.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. (*e*)

Provided that the repeal by this Act enacted shall not affect anything duly done or suffered, or any right or liability acquired, accrued or incurred, or any security given under the section hereby repealed, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against such section, or any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

(*a*) Section 156 of the Public Health Act, 1875, provided as follows :—It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street or any part thereof

**Note to
Section 3.**

beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same. Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. It was held, with reference to this section, that the expression "house or building" did not include new buildings in course of erection upon land never before built upon. *Williams v. Wallasey Local Board*, 16 Q. B. D. 718; 55 L. J. M. C. 133; 55 L. T. (N.S.) 27; 34 W. R. 517; 50 J. P. 582. It was in consequence of this decision that the enactment in the text was passed.

(b) The Public Health Act, 1875, s. 4, which must be read into this Act (see section 2, *ante*, p. 531), enacts that the expression "house" includes schools, also factories and other buildings in which persons are employed. There is no definition of the word "building." See the cases as to what is a house or a building, *ante*, p. 15. Whether a structure is a building within the meaning of the present section or not is a question of fact to be determined by the justices, provided the thing erected is of such a nature that it is capable of being a building. A wooden structure used for advertising purposes, that was 9 feet 6 inches long, 3 feet wide, and 7 feet high, was roofed over and had a glass front, and a door by which to enter, and was fastened to the ground by four posts, let into the ground to the depth of 9 to 12 inches, and it was held to be of such a nature that it was capable of being a building within the meaning of this section. *Leicester (Mayor, &c., of) v. Brown*, 62 L. J. M. C. 22; 67 L. T. (N.S.) 686; 41 W. R. 78; 57 J. P. 70; 5 R. 35.

(c) The word "street," as defined by the Public Health Act, 1875, s. 4, *ante*, p. 12, includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. This definition is incorporated by section 2 *ante*, p. 531, and consequently the Act applies to any road, public or private, whether it has acquired the character of a street in the ordinary acceptance of the term or not. Indeed, it was the very object of the Act to enable an urban authority to exercise some control over the line of buildings in new streets, though the Act is defective to this extent, that there will be no such control over the earliest buildings in the street, and these may really fix the line for the rest of the street. In the repealed section 156 the word *street* had its ordinary signification, not the wider meaning. See *Reg. v. Fullford*, 33 L. J. M. C. 122; 10 L. T. (N.S.) 346; 10 Jur. (N.S.) 522; 12 W. R. 715; 28 J. P. 357.

A house at the corner of two streets may be in both streets for the purposes of this enactment. *Gilbert v. Wandsworth District Board of Works*, 60 L. T. (N.S.) 149; 53 J. P. 229. See also *London County Council v. Lavrance* [1893], 2 Q. B. 228; 62 L. J. M. C. 176; 69 L. T. (N.S.) 344; 41 W. R. 688; 57 J. P. 617; 5 R. 494.

(d) The respondent began to erect the front main wall of a new house in a street. At that time B. had raised the front main wall of a new house, which he was erecting on the same side of the street to the height of five inches above the ground. It did not appear to what extent the other walls of B.'s house had been built, or that they were connected with the front main wall. There was a distance of about 300 or 400 feet between the two houses, and there was no other house between them. The front main wall of the respondent's house was 6 feet nearer the roadway than that of B.'s house. It was held that the respondent had not committed an offence against the above enactment. *Ravensthorpe Local Board v. Hinchcliffe*, 24 Q. B. D. 168; 59 L. J. M. C. 19; 61 L. T. (N.S.) 80; 54 J. P. 421. The grounds of this decision were: (1) that there was not, when the respondent began to build, any front main wall of a house or building on B.'s land; and (2) that the words "house on either side thereof" mean "a house within some near distance, within some degree of proximity, and not one standing some considerable distance away." (Per FRY, L.J.) See, as to the second point, the case of *Barlow v. Kensington (Vestry of)*, 11 App. Cas. 257; 55 L. J. Ch. 680; 34 W. R. 521, decided in 1886, before this Act was passed.

At the junction of the O. and C. roads a house was erected abutting on the footpath of C. road. The main entrance of the house was in O. road. At a distance of 64 feet from the back wall of the premises attached to the house in C. road was situated a row of eleven small cottages set back 8 feet from C. road. The justices on an information against the owner of the houses, under the above Act, held that the house in question was both in C. and O. roads, and the cottages were buildings on one side of the house within the meaning of the section, and convicted the owner. It was held that it was a question of fact for the justices whether the

house in question was or was not in both roads, and also whether the cottages were sufficiently near to the house to be on one side thereof within the meaning of the Act, and that the conviction must be affirmed. *Warren v. Mustard*, 61 L. J. M. C. 18; 56 J. P. 402.

In considering what is the front main wall of a house or building for the purposes of this section, and whether such house or building is on either side of or in the same street as a house or building in course of erection, all the circumstances of the case must be taken into consideration. The building must be looked at as a whole: its character, its position, its distance from the house or building which is being erected or brought forward in alleged contravention of the section must be considered, a particular wing or other projection must not be selected, the front of which is to be treated as the front main wall which is to give the governing line; nor are two buildings necessarily in the same street because one faces the same road or street, or a continuation of the same road or street as the other. *Attorney-General v. Edwards* [1891], 1 Ch. 194; 63 L. T. (N.S.) 639.

As the section prohibits a house or building being brought forward beyond the front main wall of the house or building "on either side thereof," this includes a case where there are buildings only on one side of the proposed new house or building. *Leyton Local Board v. Causton*, 57 J. P. 135. See also *London County Council v. Lawrance*, *supra*. Every case under this section must be determined with regard to its own particular circumstances. In 1856, a road was laid out on a building estate and from time to time houses were built on the east side of the road so as to form a continuous line of buildings close up to that side of the road. In 1893, T. built a house on the west side of the road, but set back more than 10 feet from the roadway, and in 1894, he bought a strip of land along the west side of the road to the north of his house, with the object of erecting cottages on it. The building plans showed that the cottages would be 90 feet distant from T.'s house and would be set back 10 feet from the roadway, but nearer thereto than his house. The local board refused to approve of the plans for that reason, and it was held that a rule *nisi* for a *mandamus* to the board to approve the plans must be made absolute as there was no necessity that the cottages should under the circumstances be in a line with T.'s house. *Reg. v. Ormesby Local Board*, 43 W. R. 96. It is immaterial that adjoining property may be injured by the erection of the proposed buildings if the section is inapplicable upon the facts as to the buildings. Thus, where houses on one side of a proposed new building were set back 62 feet from the roadway, and it was proposed to erect the new house at a distance of 21 feet only from the roadway so as to project in front of the other houses, which would considerably diminish their value, the court holding that they were not on the facts houses in the same street on the side of the proposed new house, made absolute a rule directing the local board to approve of the plans for the proposed new house. *Reg. v. Fulwood Local Board*; *Ex parte Livesey*, 59 J. P. 311; 72 L. T. (N.S.) 592.

Where a railway company erected a station beyond the general line of buildings in a street in the metropolis, and the station was necessary for the railway and was within the limits of deviation, it was held that the provisions of the Metropolis Management Acts as to building here did not apply. *City and South London Railway Company v. London County Council* [1891], 2 Q. B. 513; 60 L. J. M. C. 99, 149; 65 L. T. (N.S.) 362; 40 W. R. 166; 56 J. P. 6; 7 T. L. R. 462, 643. This decision has since been followed in *London County Council v. London School Board*, 8 T. L. R. 643; 40 W. R. 572.

(e) It will be observed that the urban authority are not empowered to demolish a building erected contrary to this section, nor has a justice power to make an order to that effect, unless, perhaps, when the highway is obstructed. See *Bagshaw v. Buxton Local Board*, 1 Ch. D. 220; 45 L. J. Ch. 260; 34 L. T. (N.S.) 112; 24 W. R. 231; 40 J. P. 197.

The plaintiffs, owners of a house and area situate in and fronting a street, altered the front of the house by throwing out bay windows projecting beyond the street line of frontage, but not beyond the limits of the area. After the completion of the work the defendants, the local authority, threatened the plaintiffs with summary proceedings under the repealed section 156. The plaintiffs then moved *ex parte* for an injunction to restrain the defendants from taking these proceedings, alleging—(1) that as the alteration had been made over their own property, the defendants in threatening proceedings were acting *ultra vires*; (2) that the defendants, having had notice of the plaintiffs' intention to make the alterations, were bound by acquiescence; and (3) that the justices had no jurisdiction, as the defendants had not made their

**Note to
Section 3.**

complaint within six months. The motion was refused on the ground that the court could not restrain criminal proceedings, and that the grounds suggested for interference were matters of defence to be used before the magistrates. *Kerr v. Preston (Corporation of)*, 6 Ch. D. 463 ; 46 L. J. Ch. 409 ; 25 W. R. 265.

The words of this paragraph are similar to those of the repealed section 156. It was held, with reference to that section, that an offence to which the penalty was applicable continued as long as the addition to the house was maintained after written notice from the urban authority, notwithstanding that the addition was completed before the notice was given. *Rumball v. Schmidt*, 8 Q. B. D. 603 ; 46 L. T. (N.S.) 661 ; 30 W. R. 949 ; 46 J. P. 567.

The penalty will be recoverable summarily under section 251 of the Public Health Act, 1875, *ante*, p. 333.

The notice will be given and authenticated as provided by sections 266, 267, of that Act.

THE PUBLIC HEALTH ACT, 1889.

(52 & 53 VICT. CAP. 64.)

An Act to remove doubts as to the Power of the Local Government Board to make Regulations respecting Cholera. [30th August, 1889.]

29 & 30 Vict.
c. 90.
38 & 39 Vict.
c. 55.

WHEREAS under section fifty-two of the Sanitary Act, 1866, and section one hundred and thirty of the Public Health Act, 1875, the Local Government Board have power to make regulations with a view to the treatment of persons affected with cholera or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases, both on land and water :

And whereas the Local Government Board, Ireland, have like powers :

And whereas doubts have arisen as to the extent of such powers as respects authorities and vessels, and it is expedient to remove such doubts :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health Act, 1889.

This Act, so far as it relates to England, shall be construed as part of section one hundred and thirty of the Public Health Act, 1875, and as regards that part of the county of London to which section fifty-two of the Sanitary Act, 1866, applies, as part of that section.

See the Public Health Act, 1875, s. 130, *ante*, p. 147. The Sanitary Act, 1866, has now been repealed by the Public Health (London) Act, 1891, which re-enacts for the county of London, section 130 of the Public Health Act, 1875, and section 2 of this Act.

2. Regulations of the Local Government Board made in relation to cholera and choleraic diarrhoea in pursuance of section one hundred and thirty of the Public Health Act, 1875, or of section fifty-two of the Sanitary Act, 1866, may provide for such regulations being enforced and executed by the officers of Customs as well as by other authorities

Short title
and construc-
tion.

Explanation
of powers of
Local Govern-
ment Board to
make regula-
tions under
38 & 39 Vict.

and officers, and without prejudice to the generality of the powers conferred by the said sections may provide for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels ;

Section 2.
c. 55, s. 130,
and 29 & 30
Vict. c. 90,
s. 52.

(2.) Provided that the regulations, so far as they apply to the officers of Customs, shall be subject to the consent of the Commissioners of Her Majesty's Customs ;

(3.) The officers of Customs, for the purpose of the execution of any powers and duties under the said regulations, may exercise any powers conferred on such officers by any other Act.

The Local Government Board have made regulations under this Act rescinding previous orders. The full text of these orders is set out in Appendix II., *post*.

3. In this Act so far as it applies to Ireland—

Application
to Ireland.

(a.) References to section one hundred and thirty of the Public Health Act, 1875, shall be read and construed as references to section one hundred and forty-eight of the Public Health (Ireland) Act, 1878 ;

(b.) The expression " Local Government Board " shall mean the Local Government Board for Ireland.

41 & 42 Vict.
c. 52.

THE PUBLIC BODIES CORRUPT PRACTICES ACT, 1889.

(52 & 53 VICT. CAP. 69.)

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies.

[30th August, 1889.]

WHEREAS it is expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1.) Every person who shall by himself, or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, (a) for himself, or for any other person, any gift, loan, fee, reward, or advantage (b) whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, (b) doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor. (c)

Corruption
in office a
misdemeanor.

(a) This sub-section applies to the person bribed or corrupted. The next sub-section deals with the person bribing. It was held not necessary on an indictment for an

**Note to
Section 1.**

offence under this sub-section to prove that the accused at the time of the commission of the alleged offence was himself a member, officer, or servant of a public body as defined by this Act, the alleged offence being an attempt to obtain a sum of money for abstaining, or inducing other persons to abstain, from giving evidence on an application to the London County Council for a music and dancing license. *Reg. v. Edwards*, 59 J. P. 88.

(b) For the definition of advantage, public body, &c., see section 7, *infra*.

(c) This misdemeanor will be an offence which may be tried on indictment at quarter sessions (section 6). The penalty is prescribed by section 2.

(2.) Every person^(a) who shall by himself, or by, or in conjunction with any other person, corruptly give, promise, or offer any gift, loan, fee, reward, or advantage^(b) whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of any public body as in this Act defined,^(b) doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor.^(c)

(a) The word person includes a body of persons, such as a firm or joint stock company. See section 7.

(b) See the definition of advantage, public body, &c., in section 7, *infra*.

(c) See note (c) to the preceding sub-section.

Penalty for
offences.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted^(a)—

(a.) Be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine ; and

(b.) In addition, be liable to be ordered to pay to such body,^(b) and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof ; and

(c.) Be liable to be adjudged incapable of being elected or appointed to any public office^(c) for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction ; and

(d.) In the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office,^(c) and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting ;^(d) and

(e.) If such person is an officer or servant in the employ of any public body upon such conviction^(e) he shall, at the discretion of the court, be liable to forfeit his right and claim to any com-

pensation or pension to which he would otherwise have been entitled. Section 2.

(a) The court will be either the court of quarter sessions (see section 6), or the assizes, or Central Criminal Court. The offence is not punishable summarily.

(b) That is, the public body as defined by section 7 of which he is a member, officer, or servant.

(c) As to what is a public office, see section 7.

(d) The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 37, provides that every person who, in consequence of conviction, or of the report of an election court under that Act, or the Municipal Corporations Act, 1882, Part IV., or under any other Act for the time being in force, relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. By section 39, the registration officer (*i.e.*, the clerk of the county council or town clerk) in every county and borough is required annually to make out a list of persons disqualified to vote by reason of corrupt practices, and to send this list to the overseers of every parish in the county or borough, and the overseers are to publish this list, and omit the name of every person named in it from the list of voters prepared by them. By the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 24, the town clerk of every municipal borough is required annually, in July, to make out a list of persons disqualified by corrupt practices to vote at a municipal election in the borough, and to send a copy to the overseers of every parish in the borough, and the overseers must omit the names of the persons named therein from the burgess list. It seems to follow from the text that the lists prepared by clerks of the peace and town clerks under these enactments must include the names of all persons convicted under this Act.

(e) This consequence will apparently follow, whether the conviction is for a first or a subsequent conviction.

3. (1.) Where an offence under this Act is also punishable under any other enactment, or at common law, such offence may be prosecuted and punished either under this Act, or under the other enactment, or at common law, but so that no person shall be punished twice for the same offence. Savings.

It appears from Com. Dig. Officer (N.), that all officers, whether such by the common law, or made pursuant to statute, are punishable for corruption or oppressive proceedings, according to the nature and heinousness of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their offices, &c. It is also stated that bribery of an officer is punishable at common law by fine and imprisonment. It is unlikely, however, that any offence which is within the terms of this Act will be dealt with otherwise than as herein provided.

(2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

In other words, the Act will apply to the corrupt acts of members, officers, or servants who are such *de facto*, though the validity of their election or appointment may be open to question.

4. (1.) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General. Restriction on prosecution.

It is entirely in the discretion of the Attorney-General to grant or refuse his consent. See *Ex parte Hurter*, 47 J. P. 724; 15 Cox C. C. 166. But for the provision in the text, a prosecution could have been started by any person.

(2.) In this section the expression "Attorney-General" means the Attorney or Solicitor-General for England, and as respects Scotland,

Section 4. means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor-General for Ireland.

Expenses of prosecution.

5. The expenses of the prosecution of an offence against this Act shall be defrayed in like manner as in the case of a felony.

By 7 Geo. 4, c. 64, s. 22, the court before which any person shall be prosecuted or tried for any felony may order payment of the expenses of the prosecutor and his witnesses in attending before the examining magistrate and the grand jury, and in otherwise carrying on the prosecution. By section 25 these expenses are payable by the treasurer of the county. By 29 & 30 Vict. c. 52, s. 1, in any case of felony the examining magistrate can make an order for costs and expenses of the prosecutor and his witnesses, though there may have been no committal. And by 30 & 31 Vict. c. 35, the provisions of the preceding Acts were extended to the expenses of witnesses for the defence who were bound over to appear at the trial.

Jurisdiction of quarter sessions.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act.

It seems doubtful whether any such provision was necessary to give jurisdiction to the quarter sessions. The general rule with regard to indictable offences newly created by statute, is that the quarter sessions has jurisdiction unless it is otherwise expressly provided. "Archbold's Quarter Sessions," p. 912; Com. Dig. "Justice of the Peace," 13 (3); and see *R. v. Cock*, 4 M. & S. 71.

Interpretation.

7. In this Act—

The expression "public body" means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom : (a)

The expression "public office" means any office or employment of a person as a member, officer, or servant of such public body :

The expression "person" includes a body of persons corporate or unincorporate :

The expression "advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

(a) This definition includes all sanitary authorities, urban and rural.

Application of Act to Scotland.

8. In the application of this Act to Scotland the sheriff and sheriff substitute shall have jurisdiction to try any offence under this Act ; and The expression "misdemeanor" shall mean "crime and offence;" and

The expression "municipal borough" shall mean any "burgh."

9. The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act. Section 9.
50 & 51 Vict.
c. 20, not to
apply to trial
under Act.
Short title.

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889. Short title.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

(52 & 53 VICT. CAP. 72.)

An Act to provide for the Notification of Infectious Disease to Local Authorities. [30th August, 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Infectious Disease (Notification) Act, 1889. Short title.

2. This Act shall extend—

(a.)

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Extent of
Act.

(b.) To any urban, rural, or port sanitary district after the adoption thereof.

This section has been repealed in so far as it relates to London, and re-enacted by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

For the manner in which the Act may be adopted, see section 5, *infra*.

3. (1.) Where an inmate of any building (a) used for human habitation within a district to which this Act extends is suffering from an infectious disease to which this Act applies, (b) then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say :—

Notification
of infectious
disease.

(a.) The head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the building or being in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building (c) shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district : (d)

(b.) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate (e) stating the name of the patient, the situation of the

Section 3.

building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering.

(2.) Every person required by this section to give a notice or certificate who fails to give the same, shall be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding forty shillings ;(f)

Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he has reasonable cause to suppose that the notice had been duly given.(g)

(a) The word building includes ships, vessels, boats, tents, vans, sheds, or similar structures used for human habitation. See section 13, *infra*.

(b) The diseases to which the Act applies are enumerated in section 6. The Act may be extended to certain other diseases under section 7.

(c) The persons upon whom the obligation imposed by the section is laid are—(1) the head of the family ; (2) The nearest relative in the building or in attendance on the patient ; (3) the person in charge of the patient ; and (4) the occupier of the building. (As to the definition of occupier, see section 16.) A notice by one of these persons avails for all enumerated later in the foregoing list, but apparently not for any enumerated earlier. See sub-section (2). Thus, a notice given by the head of the family renders it unnecessary for the relatives to give a notice. But a notice given by the relatives does not free the head of the family from the consequences of himself failing to give the notice. As to the manner in which notices may be sent, see section 8.

(d) There is no provision here, as in section 4 (3), for the case where there are two or more medical officers.

(e) As to the form of the certificate see section 4 ; as to the manner in which the certificate may be sent, see section 8.

(f) The Summary Jurisdiction Acts are the 11 & 12 Vict. c. 43 ; 42 & 43 Vict. c. 49, and any Act amending those Acts, or either of them. (Interpretation Act, 52 & 53 Vict. c. 63, s. 13 (7).)

(g) See note (c), *supra*.

As to forms and case of several medical practitioners.

4. (1.) The Local Government Board may from time to time prescribe forms for the purpose of certificates under this Act, and any forms so prescribed shall be used in all cases to which they apply.(a)

(2.) The local authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this Act a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.(b)

(3.) Where in any district of a local authority there are two or more medical officers of health of such authority a certificate under this Act shall be given to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the local authority may from time to time direct.

(a) These forms have been prescribed.

(b) Questions have arisen as to what constitutes a public body or institution. The expression, no doubt, includes a public hospital or infirmary, and a workhouse, but not, it is submitted, a private hospital to which patients are admitted for payment, nor a medical club or provident dispensary.

5. (1.) The local authority of any urban, rural, or port sanitary district may adopt this Act by a resolution passed at a meeting of such authority, (a) and fourteen clear days at least (b) before such meeting special notice of the meeting, and of the intention to propose such resolution, (c) shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either:

Section 5.
Adoption of Act in urban or rural district.

(a.) Given in the mode in which notices to attend meetings of the local authority are usually given, (d) or

(b.) Where there is no such mode, (e) then signed by the clerk of the local authority and delivered to the member, or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England. (f)

(2.) A resolution adopting this Act shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution as the local authority may fix, and upon its coming into operation this Act shall extend to the district.

(3.) A copy of the resolution shall be sent to the Local Government Board when it is published.

(a) The meeting need not be a special meeting, but whether it is special or ordinary, the provisions of the section as to special notice of it must be strictly observed.

(b) This means fourteen days exclusive of the day of giving notice and of the date of the meeting. Thus, if a meeting were to be held on the 16th of a month containing 31 days, the last day upon which a notice for that meeting could be given under this section would be the 31st. See *Zouch v. Empsey*, 4 B. & Ald. 522; *Reg. v. J.J. of Salop*, 8 A. & E. 173; 7 L. J. M. C. 56.

(c) As a resolution cannot be proposed except by a member, it might be inferred from this that the notice must be given by the member intending to propose it, but it is to be gathered from the rest of the section that the member is to give notice of his intention to the clerk, and the clerk is to send out notice to the other members.

(d) Notice to attend meetings of the local authority are given in various ways. If the authority is a municipal corporation, the notice is given in manner provided by the Municipal Corporations Act, 1882, Schedule II., rule 6, *i.e.*, by summons to attend the meeting specifying the business to be transacted, and left or delivered by post in a registered letter at the usual place of abode of every member of the council. In the case of a district council other than a town council the summoning and notice of a meeting depends upon the regulations of the council made under the Public Health Act, 1875, Schedule I., rule 1, and section 59 of the Local Government Act, 1894, *post*.

(e) It is difficult to suggest any case to which these words can apply.

(f) There is nothing in the Act providing for the effect of an irregularity in the preliminary steps under this section. *Quære*, would such an irregularity affect the validity of the resolution and the application of the Act in the district? The Act is defective also in that it does not provide for the convenient proof of the adoption of the Act, though this will apparently always be necessary in legal proceedings. A copy of the minute authenticated in the manner prescribed by law for proof of the minutes of the local authority must apparently be produced in every case.

6. In this Act the expression "infectious disease to which this Act applies" means any of the following diseases, namely, small pox, cholera, Definition of infectious disease.

Section 6. diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes, as respects any particular district, any infectious disease to which this Act has been applied by the local authority of the district in manner provided by this Act.

The manner provided by this Act is stated in the next section.

Power to local authority to extend definition of infectious disease.

7. (1.) The local authority of any district to which this Act extends may from time to time, by a resolution passed at a meeting of such authority where the like special notice of the meeting and of the intention to propose the resolution has been given as is required in the case of a meeting held for adopting this Act, (a) order that this Act shall apply in their district to any infectious disease other than a disease specifically mentioned in this Act. (b)

(a) Before the local authority can extend the definition of infectious disease as herein mentioned, the provisions of section 5, *ante*, must be observed, as in the case of the adoption of the Act. (See that section and the notes thereto.) But see sub-section (6), *infra*, as to cases of emergency.

(b) This provision enables a local authority to include in the definition of infectious disease a disease not mentioned in section 6, such as measles. This has been done in some cases of epidemic. The order must be confirmed by the Local Government Board. See sub-section (3), *infra*.

(2.) Any such order may be permanent or temporary, and if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the local authority which made the same.

(3.) An order under this section and the revocation and variation of any such order shall not be of any validity until approved by the Local Government Board.

To this general statement there is an important exception, viz., in cases of emergency. See sub-section (6), *infra*.

(4.) When it is so approved, the local authority shall give public notice thereof by advertisement in a local newspaper and by handbills, and otherwise in such manner as the local authority think sufficient for giving information to all persons interested. They shall also send a copy thereof to each registered medical practitioner whom, after due inquiry, they ascertain to be residing or practising in their district.

The local authority have a duty cast upon them to ascertain the names of all medical practitioners in their district, whether practising or only residing there. After the Act has been in operation for some time the names of the medical practitioners will be readily ascertained from the notices sent in by them under this Act; but this hardly applies to medical men residing but not practising in the district.

(5.) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the local authority may fix, and upon such order coming into operation, and during the continuance thereof, an infectious

disease mentioned in such order shall, within the district of the authority, Section 7.
be an infectious disease to which this Act applies.

And notices of this disease must be given under this Act as in the case of one of the diseases specified in section 6, *ante*, p. 541.

(6.) In the case of emergency three clear days' notice under this section (a) shall be sufficient, and the resolution shall declare the cause of such emergency and shall be for a temporary order, and a copy thereof shall be forthwith sent to the Local Government Board and advertised, (b) and the order shall come into operation at the expiration of one week from the date of such advertisement, but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the Local Government Board.

(a) This means that instead of a fourteen clear days' notice such as is required under section 5, or section 7 (1), three clear days' notice of the meeting and of the intention to propose the resolution will be sufficient, but the resolution must declare the cause of the emergency, such as the outbreak or extent of an epidemic of measles, &c.

(b) The approval of the Local Government Board is not required except as afterwards provided in the sub-section. The advertisement must be forthwith, not after approval, as in the ordinary case under sub-section (4).

(7.) The approval of the Local Government Board shall be conclusive evidence that the case was one of emergency.

This approval is not absolutely necessary except for the purpose of keeping the order in force after a month. But if such approval is given the order will remain in force, and the fact of emergency cannot be disputed in any way.

8. (1.) A notice or certificate for the purposes of this Act shall be in writing or print, or partly in writing and partly in print; and for the purposes of this Act the expression "print" includes any mechanical mode of reproducing words. Notices and certificates.

See also section 20 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and note that although that Act was passed on the same day as this Act, it did not come into operation until the 1st January, 1890. See section 42.

(2.) A notice or certificate to be sent to a medical officer of health in pursuance of this Act may be sent by being delivered to the officer or being left at his office or residence, or may be sent by post addressed to him at his office or at his residence.

This refers to the notices given by private persons and the certificate sent by medical practitioners under section 3.

If the notice is sent by post the letter need not be registered, but it may be prudent to register the letter, in order that proof of the posting may be forthcoming if required. See section 26 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

9. Any expenses incurred by a local authority in the execution of this Act shall be paid as part of the expenses of such authority in the Expenses.

Section 9. execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses.

In the case of an urban authority the expenses will be payable out of the general district fund. In the case of a rural authority the expense will be paid as general expenses, as to which see section 229 of the Public Health Act, 1875, *ante*, p. 308.

10. * * * * *

Section 10 applied only to London, and was repealed and re-enacted by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

Non-disqualification of medical officer by receipt of fees.

11. A payment made to any medical practitioner in pursuance of this Act shall not disqualify that practitioner for serving as member of the council of any county or borough, or as member of a sanitary authority, or as guardian of a union, or in any municipal or parochial office. (*a*)

Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which he would be entitled if he were not such medical officer.

(*a*) But for this provision a medical practitioner, who was a member of a sanitary authority, might have been brought within the provisions of those statutory enactments which forbid a member of such authority to accept or hold any office or place of profit under such authority, or to be concerned in any contract with such authority. See, for example, the Municipal Corporations Act, 1882, s. 12, and the Local Government Act, 1894, s. 46.

12. * * * * *

Section 12 related to the application of the Act to Woolwich. It was repealed and re-enacted by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

Application of Act to vessels, tents, &c.

13. (1.) The provisions of this Act shall apply to every ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a building. (*a*)

(2.) A ship, vessel, or boat, lying in any river, harbour or other water not within the district of any local authority within the meaning of this Act shall be deemed for the purposes of this Act to be within the district of such local authority as may be fixed by the Local Government Board, and where no local authority has been fixed, then of the local authority of the district which nearest adjoins the place where such ship, vessel, or boat is lying. (*b*).

(3.) This section shall not apply to any ship, vessel, or boat belonging to any foreign Government.

(*a*) See, however, section 15, *post*, which exempts Crown ships and buildings; and see sub-section (3), *infra*.

(*b*) The words of this sub-section are very similar to those of section 110 of the Public Health Act, 1875, *ante*, p. 129. It seems to be doubtful whether the words apply to a ship on the sea.

14. Where this Act is put in force in any district in which there is a local Act for the like purpose as this Act, the enactments of such local Act, so far as they relate to that purpose, shall cease to be in operation. **Section 14.**
Saving for
local Act.

See a list of towns which have substituted the provisions of this Act for those contained in their Local Acts (23rd Ann. Rep. L. G. B. clxiii).

15. Nothing in this Act shall extend to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof. Exemption
of Crown
buildings.

As to the application of the Act to ships, tents, &c., see section 13, *ante*.

16. In this Act—

The expression “local authority” means each of the following authorities ; that is to say,— Definitions.

- | | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| (c.) An urban or rural sanitary authority in England within the meaning of the Public Health Acts ; and | | | | | |
| (d.) The port sanitary authority of any port sanitary district in England.(a) | | | | | |

The expression “urban or rural district” means the district for which any such urban or rural sanitary authority is elected :

The expression “port sanitary district” means the port sanitary district of London(b) and any port or part of a port for which a port sanitary authority has been constituted under the Public Health Acts, and any such port sanitary district shall form no part, for the purposes of this Act, of any urban or rural district :

The expression “occupier” includes a person having the charge, management, or control of a building,(c) or of the part of a building in which the patient is, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either as his own account or as the agent of another person,(d) and in the case of a ship, vessel, or boat, the master or other person in charge thereof.(e)

Those portions of the above section which related to London have been repealed with the exception of the reference to the port of London, by 54 & 55 Vict. c. 76. The section is set out above in so far as it is still in force.

(a) As to the constitution of port sanitary districts, see the Public Health Act, 1875, s. 287, *ante*, p. 384.

(b) See now as to the port sanitary district of London (54 & 55 Vict. c. 76), s. 111, which re-enacts section 291 of the Public Health Act, 1875, now repealed.

(c) As to what is included in the term “building,” see section 13, *ante*.

(d) As to an agent receiving the rents, see *per* BLACKBURN, J., in *Cook v. Montague*, L. R. 7 Q. B. 418 ; 41 L. J. M. C. 149 ; 37 J. P. 53 ; *St. Helen's (Mayor, &c., of) v. Kirkham*, 16 Q. B. D. 403 ; 34 W. R. 440 ; 50 J. P. 647. As to a receiver appointed by the court, see *Bacup (Corporation of) v. Smith*, 44 Ch. D. 395 ; 59 L. J. Ch. 518 ; 63 L. T. (N.S.) 195 ; 38 W. R. 697.

(e) It seems to follow from this definition that if part only of a house is let, the tenant or lodger occupying such part is the occupier ; it is only when the whole is let that the owner or his agent is to be deemed to be the occupier.

Section 17.

Application
of Act to
Scotland.

17. In the application of this Act to Scotland—

The expression “Local Government Board” shall mean Board of Supervision :

The expression “Summary Jurisdiction Acts” shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act amending the same :

The expression “local authority” shall mean the local authority as defined by the Public Health (Scotland) Act, 1867, and any Act amending the same :

The expression “England” in section five shall mean Scotland :

The powers contained in this Act shall be in addition to and not in lieu of any powers existing in any local authority by virtue of any general or local Act.

Application
of Act to
Ireland.

18. This Act shall apply to Ireland, with the following modifications :

(1.) In this Act, unless the context otherwise requires—

The expression “Local Government Board” means the Local Government Board for Ireland :

The expression “local authority” means an urban or rural sanitary authority within the meaning of the Public Health (Ireland) Act, 1878 :

The word “district” means urban sanitary district or rural sanitary district, as the case may be, within the meaning of the said Act :

The expression “clerk of the local authority” includes, in the case of an urban sanitary authority, town clerk and secretary.

(2.) References to a place of abode in England shall be construed to refer to a place of abode in Ireland.

(3.) Offences under this Act may be prosecuted, and fines under this Act may be recovered, in manner directed by the Summary Jurisdiction Acts, before a court of summary jurisdiction constituted in the manner mentioned in the two hundred and forty-ninth section of the Public Health (Ireland) Act, 1878.

41 & 42 Vict.
c. 52.

THE PUBLIC HEALTH (RATING OF ORCHARDS) ACT, 1890.

(53 & 54 VICT. CAP. 17.)

An Act to amend the Laws relating to the Rating of Orchards for Sanitary Purposes. [25th July, 1890.]

WHEREAS it is enacted by section two hundred and eleven (1) (*b.*) and section two hundred and thirty of the Public Health Act, 1875, that ^{38 & 39 Vict. c. 55.} “the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds,” shall be assessed to the general district rate in an urban district or to a separate rate levied in respect of special expenses within the meaning of the said Act in a rural district, in the proportion of one-fourth part only of the net annual value or rateable value of such land :

And whereas doubts have arisen whether orchards are or are not included among the lands to which the aforesaid exemptions apply :

And whereas it is expedient to remove such doubts, and to render the practice of assessment uniform, and to relieve orchards from all liability to be assessed for sanitary purposes at a higher rate than other cultivated lands :

Be it therefore enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Section 211 of the Public Health Act, 1875, *ante*, p. 282, is the section which deals with the assessment and levying of general district rates by urban authorities. It provides that such rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed in the full net annual value of such property ascertained by the valuation list for the time being in force. This general provision is subject to certain exceptions, one of which is contained in sub-section (1) (*b.*), and is as follows :—The owner of any tithes, or of any tithe commutation rentcharge, or the owner of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof.

Section 230 of the Public Health Act, 1875, *ante*, p. 310, provides for the mode in which a rural sanitary authority are to raise contributions from the several parishes and contributory places within their district. Precepts are issued to the overseers requiring them to pay so much for general expenses chargeable equally on the whole district, and so much for special expenses chargeable only upon one or more contributory places. The section goes on to provide as follows :—The overseers shall comply with the requisitions of such precept by paying the contributions required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception ; (namely),

That the owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as

woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property.

The present Act has simply the effect of inserting the word "orchards" after "woodlands."

It has been held by the Court of Appeal that the greenhouses used by a market gardener for growing fruit and vegetables for sale are within the section as being a market garden or nursery ground. *Purser v. Worthing Local Board*, 18 Q. B. D. 818; 56 L. J. M. C. 78; 35 W. R. 682; 51 J. P. 596; 3 T. L. R. 509, 636.

Section 1.

Amendment
of 38 & 39
Vict. c. 55,
s. 211 (1) (b.)
and s. 230.

1. From and after the first day of October, one thousand eight hundred and ninety, section two hundred and eleven, sub-section one, and section two hundred and thirty of the Public Health Act, 1875, shall be read and construed as if the word "orchards" was inserted in each of those sections after the word "woodlands." Provided that nothing in this Act shall apply to any rate made under either of the said sections on or before the first day of October, one thousand eight hundred and ninety.

The effect of this enactment has been already stated.

Short title.

2. This Act may be cited as the Public Health (Rating of Orchards) Act, 1890.

THE INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

(53 & 54 VICT. CAP. 34.)

An Act to prevent the spread of Infectious Disease.

[4th August, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Infectious Disease (Prevention) Act, 1890.

Definitions.

2. Expressions used in this Act shall, unless the context otherwise requires, have the same meaning as the like expressions used in the Infectious Disease (Notification) Act, 1889 ; (a) and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, (b) and may be applied to any other infectious disease in the same manner as that Act may be applied to such disease. (c)

In this Act—

Section 2.

“Dairy” shall include any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale :

“Dairyman” shall include any cowkeeper, purveyor of milk, or occupier of a dairy :

“Medical officer of health” shall include any person duly authorised to act temporarily as medical officer of health :*(d)*

* * * * *

(a) See that Act, *ante*, p. 539. Section 13 extends the definition of a building to shops, vessels, boats, tents, vans, &c., used for human habitation. Section 16 is the interpretation clause.

(b) These are small-pox, cholera, diphtheria, membranous croup, erysipelas, the diseases known as scarlatina or scarlet fever, and the fevers known by any of the following names :—Typhus, typhoid, enteric, relapsing, continued, or puerperal.

(c) As to the application of that Act to other diseases, see section 7, *ante*, p. 542.

(d) The rest of this section applied to Woolwich, and is now repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

3. The provisions of this Act shall extend(a)—

Extent of
Act.

* * * * *

(b.) To any urban or rural sanitary district after the adoption thereof ; and the local authority of any urban or rural sanitary district may adopt all or any of the sections of this Act(b) by a resolution passed at a meeting of such authority. Fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either—

(a.) Given in the mode in which notices to attend meetings of the local authority are usually given ; or

(b.) Where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England.*(c)*

Every such resolution shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix ; and upon its coming into operation such of the sections of this Act as are mentioned in such resolution shall extend to the district.*(d)*

A copy of the resolution shall be sent to the Local Government Board when it is published.

A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown ; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground

Section 3. that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.(e)

(a) The provisions by which the Act was extended to London districts were repealed by the Public Health (London) Act, 1891.

(b) The local authority need not adopt the whole of the Act. They can adopt one or more sections if they think fit. In this respect the present enactment differs from the corresponding provisions of the Infectious Disease (Notification) Act, 1889, *ante*, p. 539, and of the Public Health Amendment Act, 1890, *post*, p. 560.

(c) The provisions as to the adoption of the Act are identical with those of the Infectious Disease (Notification) Act, 1889, s. 5, *ante*, p. 541. The reader is referred to the notes on that section.

(d) This paragraph is also identical with section 5 (2) of the Infectious Disease (Notification) Act, 1889, *ante*, p. 541, except that, as already stated, some only of the sections of the Act may be adopted.

(e) This paragraph contains a most useful provision. We have already pointed out that the want of a similar clause was a defect in the Infectious Disease (Notification) Act, 1889. The words "copy of the advertisement" probably mean a copy of the newspaper containing the advertisement. It seems that the objection to the resolution mentioned in the paragraph may be raised within the three months following the first advertisement.

Inspection of dairies in certain cases : power to prohibit supply of milk.

4. In case the medical officer of health(a) is in possession of evidence that any person in the district is suffering from infectious disease(b) attributable to milk supplied within the district from any dairy(c) situate within or without the district, or that the consumption of milk from such dairy is likely to cause infectious disease to any person residing in the district, such medical officer shall, if authorised in that behalf by an order of a justice having jurisdiction in the place where such dairy is situate,(d) have power to inspect such dairy, and, if accompanied by a veterinary inspector(e) or some other properly qualified veterinary surgeon,(f) to inspect the animals therein, and if on such inspection the medical officer of health shall be of opinion that infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the local authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the local authority may thereupon give notice to the dairyman(g) to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until such order has been withdrawn by the local authority, and if, in the opinion of the local authority, he fails to show such cause, then the local authority may make such order as aforesaid ;(h) and the local authority shall forthwith give notice of the facts to the sanitary authority and county council (if any) of the district or county in which such dairy is situate(i) and also to the Local Government Board. An order made by a local authority in pursuance of this section shall be forthwith withdrawn on the local authority or the medical officer of health on its behalf being satisfied that the milk supply has been changed, or that the cause of the infection has been removed.(k) Any person refusing to permit the medical officer of health on the production of such order as aforesaid to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or after any such order not to supply milk as aforesaid has been given, supplying any milk within the district in contravention of such order, or selling it for consumption therein, shall

be deemed guilty of an offence against this Act.(l) Provided always, that proceedings in respect of such offence shall be taken before the justices of the peace having jurisdiction in the place where the said dairy is situate.(m) Provided also, that no dairyman shall be liable to an action for breach of contract if the breach be due to an order from the local authority under this Act.(n)

Section 4.

(a) This expression includes any person duly authorised to act temporarily as medical officer of health. See section 2, *ante*, p. 549.

(b) As to the diseases included under this term, see notes (b) and (c) to section 2.

(c) As to the definition of dairy, see section 2.

(d) The dairy may be in another county, and the order must in that case be made by a justice of that county.

(e) The Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 59, provides that the expression "inspector of the Board of Agriculture" or "inspector of a local authority" means a person appointed to be an inspector for purposes of the Act, by the Privy Council, or the Board of Agriculture, or by a local authority, as the case may be; and "inspector" used alone, means such a person, by whichever authority appointed; "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture. This enactment seems to explain the term used in the text. As to the remuneration of the veterinary inspector or surgeon, see section 20, *post*, p. 558. It may be mentioned that the local authorities for the purposes of the Diseases of Animals Act, 1894, are now, by section 3 of that Act (i.) for each borough not being a borough to which section 39 of the Local Government Act, 1888, applies, the borough council; (ii.) for the residue of each administrative county, the county council. But in the city of London the corporation are the local authority, and in the Improvement Act district of Hove, the Hove Improvement Act Commissioners are, under section 58 of the same Act, the local authority.

(f) This means a person whose name is on the register of members of the Royal College of Veterinary Surgeons. 44 & 45 Vict. c. 52. See *Veterinary College v. Robinson* [1892], 1 Q. B. 557; 61 L. J. M. C. 446; 66 L. T. (N.S.) 263; 40 W. R. 413; 56 J. P. 313; *Veterinary College v. Groves*, 57 J. P. 505.

(g) For the definition of a "dairyman," see section 2, *ante*, p. 549.

(h) The order will forbid the dairyman to supply milk from the dairy within the district of the local authority until the order is withdrawn.

(i) As already pointed out, the dairy may be in another sanitary district and in another county. If it is in another district, notice must be given to the sanitary authority of that district, and, in any case, notice must be given to the county council of the county in which the dairy is situate.

(k) The change of the milk supply can only occur in the case of a seller of milk who buys the milk he sells. When there is a change in the milk supply or when the cause of the infection has been removed, the section imposes a duty on the local authority to withdraw the order forthwith.

(l) As to the penalties for these offences and their recovery, see sections 16, 18, *post*, pp. 557, 558.

(m) See note (d), *supra*.

(n) The meaning of this proviso appears to be that if the dairyman is under a contract to supply milk within the district and he is prevented from fulfilling his contract by an order under this section, he is not to be liable to pay damages for breach of contract.

5.(a) Section one hundred and twenty of the Sanitary Act, 1866, so far as it relates to any London district, and section one hundred and twenty of the Public Health Act, 1875, so far as it applies to any urban or rural sanitary district in which this section is adopted,(b) shall be repealed and the following provisions shall be in force instead thereof, viz. :—

- (1.) Where the medical officer of health of any local authority,(c) or any other registered medical practitioner,(d) certifies that the cleansing and disinfecting of any house,(e) or part thereof, and

Cleansing and disinfecting of premises, &c.
29 & 30 Vict. c. 90.
38 & 39 Vict. c. 55.



Section 5.

of any articles therein likely to retain infection, would tend to prevent or check infectious disease, (f) the clerk to the local authority (g) shall give notice in writing to the owner or occupier (h) of such house or part thereof that the same and any such articles therein will be cleansed and disinfected by the local authority at the cost of such owner or occupier, unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part thereof and any such articles therein to the satisfaction of the medical officer of health within a time fixed in the notice. (i)

(a) The opening words of the section applied only to London, and as they are repealed by the Public Health (London) Act, 1891, the section is here set out only in so far as it is still in force.

(b) It is only when this section is adopted in a sanitary district that section 120 of the Public Health Act, 1875, *ante*, p. 141, is repealed in that district; and if the adoption is rescinded, section 120 will again be in force in that district.

(c) The medical officer may be the person temporarily acting as such. See section 2, *ante*, p. 549. For the definition of the local authority, see 52 & 53 Vict. c. 72, s. 16, *ante*, p. 545, which is applied to this Act by section 2.

(d) See the note to 51 & 52 Vict. c. 41, s. 18, *ante*, p. 502.

(e) There is no provision extending the meaning of the term "house" to tents, vans, or sheds, as in 52 & 53 Vict. c. 72, s. 13. But by reason of the reference to an occupier later on in the section, an occupier being a person defined by section 16 of that Act (see section 2, *ante*, p. 549), the section may apply to a ship, the master being the occupier.

(f) It should be borne in mind that there are other provisions in the Public Health Act, 1875, the object of which is to prevent or check infectious disease by means of the cleansing or disinfection of premises. Thus, section 46, *ante*, p. 73, contains provisions for the cleansing of houses in a filthy condition, where on the certificate of any two medical practitioners it appears to the local authority that the health of any person is affected or endangered, or when such cleansing would tend to prevent or check infectious diseases. Under section 80, *ante*, p. 102, the local authority may make bye-laws for taking precautions in the case of an infectious disease in a common lodging-house, and such bye-laws may provide for cleansing and disinfection. And similar bye-laws for houses let in lodgings may be made under section 90, *ante*, p. 106. See also section 6 of the Factory and Workshops Act, 1895, 58 & 59 Vict. c. 37, in the Appendix, *post*, as to penalties for allowing wearing apparel to be made in a place where there is infectious disease.

(g) Section 120 of the Public Health Act, 1875, *ante*, p. 141, provides for the giving of the notice by the local authority. As such a notice would in any case be authenticated by the clerk's signature under section 266, it would appear at first sight that the express reference to the clerk involved no change. But in reality it involves an important change, for while the giving of the notice by the local authority requires a direction of the local authority at a meeting, the clerk must now act without reference to the local authority, and without waiting for a meeting.

(h) See the definition of "occupier" in 52 & 53 Vict. c. 72, s. 16, *ante*, p. 545, which is incorporated by section 2 of this Act.

(i) Under section 120 of the Public Health Act, 1875, *ante*, p. 141, the notice required the owner or occupier to cleanse within a specified time. The text requires him to say within twenty-four hours of the receipt of the notice whether or no he intends to cleanse within the specified time.

(2.) If, within twenty-four hours from the receipt of the notice, the person to whom the notice is given does not inform the local authority as aforesaid, or if, having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected as aforesaid within the time fixed in the notice, the house or part thereof and articles shall be cleansed and disinfected by the officers of the local authority (a) under

the superintendence of the medical officer of health, and the expenses incurred may be recovered from the owner or occupier in a summary manner. Section 5.

(a) Section 17, *post*, p. 557, gives a power of entry to the officers upon producing an authority in writing. The obstruction of the officers is an offence punishable under section 16. As to the provision of temporary shelter or house accommodation for the members of a family who have been compelled to leave their dwelling, to enable it to be disinfected, see section 15, *post*, p. 557.

(b) That is, by summary proceedings before a court of summary jurisdiction. The expenses will be a civil debt within the meaning of the Summary Jurisdiction Act, 1879, ss. 6, 35.

(3.) Provided that where the owner or occupier of any such house or part thereof is unable in the opinion of the local authority, or of their medical officer of health, effectually to cleanse and disinfect such house or part thereof, and any article therein likely to retain infection, the same may without any such notice being given as aforesaid, but with the consent of such owner or occupier, be cleansed and disinfected by the officers of and at the cost of the local authority.

This proviso is very similar to that contained in section 120 of the Public Health Act, 1875. The inability to cleanse, &c., need not arise from poverty; it may arise from want of proper appliances.

As to the fund out of which the expenses of the local authority will be defrayed, see section 20, *post*, p. 558.

6. Any local authority (a) or the medical officer of health (b) of any local authority generally empowered by the authority in that behalf, (c) may by notice in writing require the owner of any bedding, clothing, or other articles which have been exposed to the infection of any infectious disease (d) to cause the same to be delivered over to an officer of the local authority for removal for the purpose of disinfection; and any person who fails to comply with such a requirement shall be liable to a penalty not exceeding ten pounds. (e)

Disinfection
of bedding,
&c.

The bedding, clothing, and articles shall be disinfected by the authority, and shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage (f) the authority shall compensate the owner for the same, and the amount of compensation shall be recoverable in, and in case of dispute shall be settled by, a court of summary jurisdiction. (g)

(a) See the definition of a local authority in 52 & 53 Vict. c. 72, s. 16, *ante*, p. 545.

(b) See section 2, *ante*, p. 549.

(c) This means that if the local authority give a general power to act under this section, he may give the notice under the section without waiting for any express sanction of the local authority.

(d) As to the definition of "infectious disease," see section 2, *ante*, p. 549, and the notes thereto.

(e) As to the recovery of this penalty, see section 18, *post*, p. 558.

(f) This expression implies that the local authority are not to be liable for all damage which may be done by the removal and disinfection of the bedding, &c., but only for such damage as may have been unnecessary, *i.e.*, such as might with reasonable care have been avoided. This section, it should be observed, does not interfere with the power of the local authority to direct the destruction of bedding, &c., on payment of compensation under section 121 of the Public Health Act, 1875, *ante*, p. 142.

(g) For the definition of a "court of summary jurisdiction," see the Interpretation Act, 1889, s. 13 (11), the effect of which is stated, *ante*, p. 22.

Section 7.

Penalty on persons ceasing to occupy houses without previous disinfection or giving notice to owner, or persons making false answers.(a)

7. Every person who shall cease to occupy any house, room, or part of a house in which any person has within six weeks previously been suffering from an infectious disease(b) without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a registered medical practitioner,(c) as testified by a certificate signed by him,(d) or without first giving to the owner of such house, room, or part of a house, notice of the previous existence of such disease, and every person ceasing to occupy any house, room, or part of a house, and who on being questioned by the owner thereof, or by any person negotiating for the hire of such house, room, or part of a house, as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, shall be liable to a penalty not exceeding ten pounds.(e)

(a) Where this section of the Act is in force, the local authority are required by section 14, *post*, p. 557, to give notice of its provisions to the occupier of any house in which they are aware that there is a person suffering from an infectious disease.

(b) For the definition of "infectious disease," see section 2, *ante*, p. 549, and the note thereto.

(c) The practitioner may be any registered medical man, not necessarily the medical officer of health; he will generally be the doctor who has been in attendance on the patient.

(d) The section does not provide that the medical practitioner must give such certificate even when he is so satisfied. If the certificate is refused, the outgoing tenant can only satisfy the terms of the section by giving notice to the owner. If after such notice to the owner he lets the house, &c., without previous disinfection, he may be liable to conviction under section 128 of the Public Health Act, 1875, *ante*, p. 146, if the disease was a "dangerous infectious disorder."

(e) As to the recovery of this penalty, see section 18, *post*, p. 558.

Prohibiting retention of dead bodies in certain cases.

8. No person, without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary(a) or in a room not used at the time as a dwelling-place, sleeping-place, or workroom,(b) for more than forty-eight hours, the body of any person who has died of any infectious disease.(c)

(a) A public mortuary may be provided by a sanitary authority under section 141 of the Public Health Act, 1875, and by section 142 of that Act, *ante*, p. 154, where the body of one who has died of an infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order, and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate; but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

A mortuary may also be provided by a burial board with the consent of the vestry under 15 & 16 Vict. c. 85, s. 42.

The text applies to any public mortuary, however provided.

(b) This section will have no application where the body is not kept in a room used as a dwelling-place, sleeping-place, or workroom. It was intended to provide for cases in which the family of the deceased have no place to keep the body, except in a case where they live, or sleep, or work.

(c) See the definition of "infectious disease" in section 2, *ante*, p. 549. For the penalty for contravening this section and recovery thereof, see sections 16 and 18, *post*.

9. If any person shall die from any infectious disease^(a) in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried or taken direct to some cemetery or place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds.^(b) Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary,^(c) and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

Section 9.
Bodies of persons dying of infectious diseases in hospital, &c., to be removed only for burial.

(a) See the definition of "infectious disease," section 2, *ante*, p. 549.

(b) As to the recovery of this penalty, see section 18, *post*, p. 558.

(c) See the notes to section 8, *ante*, p. 554.

10. Where the body of any person who has died from any infectious disease^(a) remains unburied elsewhere than in a mortuary^(b) or in a room not used at the time as a dwelling-place, sleeping-place, or work-room, for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building,^(c) any justice may, on the application of the medical officer of health, order the body to be removed at the cost of the local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial.^(d)

Justices may in certain cases order dead bodies to be buried.

(a) See the definition in section 2, *ante*, p. 549.

(b) See the notes to section 8, *ante*, p. 554.

(c) This clause applies generally to the keeping of a dead body in any place whatsoever so as to endanger the health of the persons in the house or in adjoining or neighbouring houses; and it is to be observed that it applies to any dead body, not merely to the body of a person who has died of an infectious disease.

(d) Compare the provisions of the Public Health Act, 1875, s. 142, *ante*, p. 154.

The person in whose house the dead body lies is bound by common law to inter the body decently. *Reg. v. Price*, 12 Q. B. D., at p. 252. On this ground it was

**Note to
Section 10.**

held that the authorities of a public hospital, and not the guardians, were liable to bury a person who had died in the hospital. *Reg. v. Stewart*, 12 A. & E. 773; 10 L. J. M. C. 40; 4 P. & D. 349. An executor is liable to pay funeral expenses. *Brice v. Wilson*, cited in *Green v. Salmon*, 8 A. & E. 384; *Rogers v. Price*, 3 Y. & J. 28. A husband is liable for the expenses of burying his wife. *Jenkins v. Tucker*, 1 H. Bl. 91; *Ambrose v. Kerrison*, 10 C. B. 776; 20 L. J. C. P. 135; *Bradshaw v. Beard*, 12 C. B. (N.S.) 344; 6 L. T. (O.S.) 458. And see *In re McMyn*, *Lightbown v. McMyn*, 33 Ch. D. 575; 55 L. J. Ch. 845; 55 L. T. (N.S.) 834; 35 W. R. 179. A parent is bound to provide for the burial of his child if he has the means, but not if he has no means, nor is he bound to apply for relief by way of loan from the guardians to enable him to do so. *Reg. v. Vann*, 2 Den. C. C. 325; 21 L. J. M. C. 39; 15 Jur. 1090.

Disinfection
of public
conveyances
if used for
carrying
corpses.(a)

11. Any person who hires or uses a public conveyance(b) other than a hearse for the conveyance of the body of a person who has died from any infectious disease(c) without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act.(d)

(a) This section supplies an omission from section 126 of the Public Health Act, 1875, *ante*, p. 144.

(b) A public conveyance means one which plies for hire, such as a hackney or stage carriage. It is not quite clear that it would include a carriage hired from an innkeeper, jobmaster, or undertaker.

(c) See the definition in section 2, *ante*, p. 549.

(d) As to the penalty for the offence and its recovery, see sections 16 and 18, *post*.

Detention
of infected
person with-
out proper
lodging in
hospital by
order of
justice.

12. Any justice of the peace acting in and for the district of the local authority,(a) upon proper cause shown to him, may make an order directing the detention in hospital at the cost of the local authority of any person suffering from any infectious disease(b) who is then in an hospital for infectious disease and would not on leaving such hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disorder by such person.(c) Any order so to be made by any such justice may be limited to some specific time, but with full power to any justice to enlarge such time as often as may appear to him to be necessary. It shall be lawful for any officer of the local authority or inspector of police acting in the district, or for any officer of the hospital, on any such order being made, to take all necessary measures and do all necessary acts for enforcing the execution thereof.(d)

(a) Since the passing of the Local Government Act, 1888, an urban district cannot be in two counties. See section 50 of that Act, *ante*, p. 514. If it is a borough having a separate commission of the peace and separate quarter sessions, in general the borough justices alone will have jurisdiction in the borough; if it has no separate quarter sessions, the county and borough justices will have concurrent jurisdiction in the borough. See the Municipal Corporations Act, 1882, s. 154.

It should be borne in mind that a county justice has jurisdiction throughout his entire county, not merely in the division in which he resides or usually acts. See *Reg. v. Beckley*, 20 Q. B. D. 187; 57 L. J. M. C. 22; 57 L. T. (N.S.) 716; 36 W. R. 160; 52 J. P. 120.

(b) See the definition in section 2, *ante*, p. 549.

(c) Guardians have power to detain in a workhouse persons therein suffering from infectious or contagious disease under 30 & 31 Vict. c. 106, s. 22. The provision in the text applies to sick persons who are in the hospital for infectious disease.

(d) This means that the officer of the local authority, inspector of police, or hospital officer may, if necessary, forcibly detain the sick person.

Note to
Section 12.

13. Any person who shall knowingly cast, or cause or permit to be cast, into any ash-pit, ash-tub, or other receptacle for the deposit of refuse matter any infectious rubbish^(b) without previous disinfection, shall be guilty of an offence under this Act.^(c)

Infectious
rubbish
thrown into
ashpits, &c.,
to be dis-
infected.^(a)

(a) When this section is in force notice of its provisions must be given to the occupier of any house in which there is a person suffering from infectious disease. See the next section.

(b) It is difficult to say what is infectious rubbish. It would seem to include everything which comes from the room of a person suffering from infectious disease which might, in the ordinary course, be thrown into the ashpit if the disease were not infectious, such as poultices, rags, &c.

(c) As to the penalty for this offence and its recovery, see sections 16 and 18, *post*.

14. Where sections seven and thirteen of this Act, or either of them, are in force in any district, the local authority shall give notice of the provisions thereof to the occupier of any house in which they are aware that there is a person suffering from an infectious disease.

Notice of
certain
provisions.

The local authority can conveniently fulfil this requirement by having leaflets printed stating the effect of the sections, and by delivering these to the occupiers when necessary. It is submitted that the neglect of the local authority to fulfil this requirement will not excuse the occupier for breach of sections 7 or 13.

15. The local authority shall from time to time provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority.

Temporary
shelter, &c.

This applies in cases where a dwelling has to be disinfected under section 5, *ante*.

16. Every person who shall wilfully obstruct any duly authorised officer of the local authority in carrying out the provisions of this Act, or who shall obstruct the carrying out of an order made by a justice under this Act,^(a) or who shall offend against any enactment of this Act for the time being in force in any district by which no penalty is specifically imposed,^(b) shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues.^(c)

Penalties.

(a) A justices' order may be made under sections 4, 10, and 12.

(b) See sections 4, 8, 11, and 13.

(c) As to the recovery of penalties, see section 18, *post*. See also definition of "daily penalty" by section 11 (3) of the Public Health Acts Amendment Act, 1890, *post*, p. 565, and note thereto.

17. For the purpose of carrying into effect the provisions of section five^(a) of this Act the local authority may, by any officer appointed in that behalf, who shall produce his authority in writing,^(b) enter on any

Power of
entry for
purposes of
section 5.

Section 17. premises between the hours of ten o'clock of the forenoon and six o'clock of the afternoon.

(a) See section 5, *ante*, p. 551, which provides for the cleansing and disinfection of premises, &c.

(b) This authority may apparently be authenticated by the signature of the clerk. See section 266 of the Public Health Act, 1875, *ante*, p. 358. If not, it must be under seal, as a local authority can give no authority except under seal. And it may be inferred from the language in the text that a special authority must be given in each case.

Recovery and application of penalties.

18. Every penalty imposed by this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the local authority, or of their duly authorised officer, but not otherwise, and shall be paid to the local authority.

The expression "court of summary jurisdiction" means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is authorised to act under the Summary Jurisdiction Acts, and whether acting under these Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law. 52 & 53 Vict. c. 63, s. 13, sub-sect. (11).

The effect of the provision in the text is to make the penalties recoverable by summary proceedings before justices. See section 41 of the Summary Jurisdiction Act, 1879, which provides for the application of that Act to future Acts.

A common informer cannot proceed for penalties under this Act. It will apparently be sufficient to give to an officer, *e.g.*, the clerk, a general authority to lay information under this Act on behalf of the local authority.

Superseding in certain cases of provisions in local Acts.

19. Where a provision of this Act is put in force in any district in which there is any similar provision in force contained in any local Act, such last-mentioned provision shall cease to be in operation.

Many local Acts contain provisions similar to those of this Act. Such provisions will, for the time being, be superseded if the corresponding sections of this Act are adopted. Compare section 14 of the Infectious Disease (Notification) Act, 1889, *ante*, p. 545.

Expenses.

20. Any expenses incurred by a local authority in the execution of any of the provisions of this Act, including the reasonable remuneration of any veterinary inspector or surgeon employed under section four, shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses.

The expenses of an urban authority will be paid as provided by the Public Health Act, 1875, ss. 207, 208, *ante*, p. 276. In general they will be defrayed out of the general district fund.

General expenses of a rural authority are raised under section 230 of the Public Health Act, 1875, *ante*, p. 310, out of the poor rates of all the parishes in the district.

Power of local authority to rescind adoption of Act.

21. Any resolution adopting all or any of the sections of this Act may be rescinded, either wholly or as regards any of the adopted sections, by resolution of the local authority, but notice of the meeting at which such resolution is to be proposed, and of the intention to propose the same, shall be given, and such resolution shall be published, and shall come into operation, in like manner and at such time as is hereinbefore provided with respect to resolutions adopting this Act, and

a copy of the resolution shall be sent to the Local Government Board Section 21. when it is published.(a)

On the resolution coming into effect the sections of this Act, the adoption of which is thereby rescinded, shall cease to extend to the district.

The provisions hereinbefore contained, as to evidence of and objections to the effect of a resolution adopting this Act, shall apply to any resolution rescinding such adoption.(b)

(a) In order to rescind the adoption of the Act or of any section of it, it will be necessary to follow the procedure prescribed by section 3. Fourteen clear days' notice of the meeting and of the intention to propose the rescinding resolution must be given to each member of the local authority. The resolution, if passed, must be published by advertisement in a local newspaper and by handbills, &c., and it will come into operation on the day fixed by the local authority, not being less than a month after the first publication of the advertisement.

(b) The provisions here referred to are those contained in the concluding paragraph of section 3.

22. This Act shall not apply to Scotland.

Extent of Act.

23. This Act shall apply to Ireland, with the same modifications as are made in the Infectious Disease (Notification) Act, 1889, for the purpose of its application to Ireland and with the following additional modifications :

Application of Act to Ireland.
52 & 53 Vict.
c. 72.

In this Act, unless the context otherwise requires—

The expression "Her Majesty's Privy Council" means the Lord Lieutenant acting by the advice of Her Majesty's Privy Council in Ireland :

The expression "inspector of police" includes a member of the Royal Irish Constabulary Force and a member of the Dublin Metropolitan Police :

The reference to section one hundred and twenty of the Public Health Act, 1875, shall be taken to be a reference to section one hundred and thirty-seven of the Public Health (Ireland) Act, 1878.

41 & 42 Vict.
c. 52.

24. Nothing in or done under this Act shall interfere with the operation or effect of the Contagious Diseases (Animal) Acts, 1878 to 1886, or of any order, license, or act of Her Majesty's Privy Council or the Local Government Board made, granted, or done, or to be made, granted, or done, thereunder, or of any order, regulation, license, or act of a local authority made, granted, or done under any such order of the Privy Council or the Local Government Board ; or exempt any dairy, or building, or thing whatsoever, or any body or person from the provisions of any general Act relating to dairies, milk, or animals, already passed, or to be passed in this or any future session of Parliament.

Saving for Acts relating to dairies, animals, &c.

The Contagious Diseases (Animals) Act, 1886 (49 & 50 Vict. c. 32), s. 9, transferred from the Privy Council and the local authorities for the administration of the Contagious Diseases (Animals) Acts to the Local Government Board and the sanitary authorities throughout the country the powers given to the former by the 41 & 42 Vict. c. 74, s. 34, with reference to dairies, cowsheds, and milkshops. The provisions of these Acts are set out, *ante*, p. 470, and the orders under them are contained in Appendix II., *post*. All the other provisions of the Contagious Diseases (Animals) Acts, 1878 to 1886, are now repealed and replaced by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57).

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

(53 & 54 VICT. CAP. 59.)

An Act to amend the Public Health Acts.

[18th August, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

GENERAL.

Section 1.
Division of
Act into
parts.

1. This Act is divided into parts as follows :—

- Part I. General.
- Part II. Telegraph, &c., wires.
- Part III. Sanitary and other provisions.
- Part IV. Music and dancing.
- Part V. Stock.

Short title,
construction,
and extent
of Act.

2. (1.) This Act shall be construed as one with the Public Health Acts.(a)

(2.) Part One of this Act shall extend to England and Wales and Ireland, exclusive of the administrative county of London. Parts Two, Three, Four, and Five shall extend to any district in which they are respectively adopted under the provisions of this Act.(b)

(3.) This Act may be cited as the Public Health Acts Amendment Act, 1890, and this Act and the Public Health Acts may be cited together as the Public Health Acts.(a)

(a) There is no definition in this Act of the expression "Public Health Acts" so far as it relates to England and Wales. There is, however, a definition in the Short Titles Act, 1892 (55 & 56 Vict. c. 10), and see the list contained in 51 & 52 Vict. c. 52, s. 1, *ante*, p. 531.

(b) The adoption of these parts of the Act is provided for by the next section.

Adoption
of Act
by local
authorities.

3. The following provisions shall have effect with regard to the adoption of the parts of this Act which are adoptive by local authorities :—

- (1.) An urban authority may adopt all or any of such parts.(a)
- (2.) A rural authority may adopt Part Three so far as it is declared by this Act to be applicable to such authority,(b) without prejudice to the provisions of this Act relating to the investing of rural authorities with urban powers.(c)

(a) Notice that the whole of a Part must be adopted and that particular sections cannot be adopted to the exclusion of others, as under the Infectious Disease (Prevention) Act, 1890, s. 3, *ante*, p. 549.

(b) The provisions of Part III., which are applicable in rural sanitary districts, are those mentioned in section 50, *post*, p. 593. Mention is made in the notes to each section whether it is or is not so applicable.

(c) The provisions of the Act relating to the investing of rural authorities with urban powers are contained in section 5, *post*.

(3.) The adoption shall be by a resolution passed at a meeting (a) of the local authority ; and one calendar month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either—

(a.) Given in the mode in which notices to attend meetings of the authority are usually given ; or

(b.) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England. (b)

(a) The meeting need not be a special meeting ; the resolution may be passed at an ordinary meeting so long as the special notice is given as provided by the text.

(b) The provisions of this sub-section are similar to those in 52 & 53 Vict. c. 72, s. 5, *ante*, p. 541, and the 53 & 54 Vict. c. 34, s. 3, *ante*, p. 549, except that the notice must be a month's notice. As to the manner in which the notices should be given, see the notes to the section last-mentioned.

(4.) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, (a) and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation such parts of the Act as are adopted shall extend to that district.

(a) The fixing of the notices on the church and chapel doors is not required by the corresponding provisions of 52 & 53 Vict. c. 72, s. 5, *ante*, p. 541, and 53 & 54 Vict. c. 34, s. 3, *ante*, p. 549.

It is not quite clear that the notices need be fixed to the doors of Nonconformist chapels. It has been held under 7 Will. 4, & 1 Vict. c. 45, s. 2, which requires notices of vestry meetings to be affixed "on or near the door of all the churches and chapels within such parish or place," that such notices need not be affixed to churches or chapels other than those of the Church of England. See *Ormerod v. Chadwick*, 16 M. & W. 367 ; 16 L. J. M. C. 143 ; 11 J. P. 138 ; *Ex parte Warblington*, 18 Jur. 494 ; *Reg. v. Whipp*, 4 Q. B. 141 ; 7 Jur. 194 ; 12 L. J. M. C. 64 ; *Edwards v. Hatton*, L. R. 1 A. & E. 21 ; 30 J. P. 211 ; *Reg. v. Wolferstan* [1893], 2 Q. B. 451 ; 62 L. J. M. C. 148 ; 69 L. T. (N.S.) 429 ; 42 W. R. 176. Compare the provisions in 6 & 7 Vict. c. 18, s. 23, where there is express mention of chapels not belonging to the Established Church.

Section 3. (5.) A copy of the resolution shall be sent—

- (a.) Where any part of the Act is adopted, to the Local Government Board ;
- (b.) Where Part Two is adopted, to the Board of Trade ;
- (c.) Where Part Four is adopted, to a Secretary of State.

In any case a copy must be sent to the Local Government Board. When Part II. is adopted a copy must also be sent to the Board of Trade, which is the controlling body with regard to telegraph wires. And for a similar reason, when Part IV. is adopted, a copy must also be sent to the Secretary of State.

- (6.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown ; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

This sub-section is practically identical with the concluding clause of 53 & 54 Vict. c. 34, s. 3. See the notes to that section, *ante*, p. 549.

Expenses
of local
authority.

4. All expenses incurred or payable by a local authority in the execution of this Act, and not otherwise provided for, may be charged and defrayed in the case of an urban authority as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a rural authority as part of their general expenses under the Public Health Acts.

As to the expenses of an urban authority, see section 207 and the succeeding sections of the Public Health Act, 1875, *ante*, p. 276. Such expenses will in general be paid out of the general district fund. As to the general expenses of a rural authority, see sections 229, 230, of the Public Health Act, 1875, *ante*, p. 308.

Power to
Local Govern-
ment Board
to extend
Act to rural
districts.

5. The Local Government Board may declare that any of the provisions contained in any part of this Act, which are not in force in any rural sanitary district, (a) shall be in force in that district, or any part thereof, and may invest a rural sanitary authority with any of the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of any part of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875, and in such case the date of the declaration of the Local Government Board under this section shall be substituted for the date of the adoption of this Act or any part thereof. (b)

38 & 39 Vict.
c. 55.

(a) The provisions of this Act, which are not in force in a rural district, and which cannot be adopted in a rural district, are those contained in Parts II., IV., and V., and those sections of Part III. not enumerated in section 50, *post*, p. 593.

(b) See section 276 of the Public Health Act, 1875, *ante*, p. 378.

The effect of this section, as incorporated by the text, is to enable the rural sanitary authority, or the ratepayers of any contributory place where assessments are equal to one-tenth of the rateable value of such place, to apply to the Local Govern-

ment Board to invest the rural sanitary authority with urban powers under the Act. The order must be published in the *Gazette*. If it is made at the instance of ratepayers, its operation will be limited to the contributory place.

Note to
Section 5.

See further as to investing a rural authority with urban powers section 25 of the Local Government Act, 1894, *post*.

6. Offences under this Act may be prosecuted, and penalties, forfeitures, costs and expenses recovered in like manner, and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered in a summary manner under the Public Health Acts.

Legal proceedings, &c.

The provisions of the Public Health Act, 1875, as to the prosecution of offences and the recovery of penalties, &c., are contained in Part VII. of that Act, *ante*, p. 333. The procedure is that prescribed by the Summary Jurisdiction Acts before a court of summary jurisdiction being a petty sessional court (section 251). Proceedings must be taken within the period of six months after the matter of information or complaint arose (47 & 48 Vict. c. 43, repealing and substituting for section 252 the corresponding provisions of the Summary Jurisdiction Acts). The proceedings can be taken only by the local authority, or a party aggrieved, or a person having the written consent of the Attorney-General (section 253). The penalties are to be paid to the local authority, but if there is an informer he is to receive one-half (section 254). A justice may act though he is a member of the local authority (section 258). The local authority may appear by their clerk or any member or officer generally or specially authorised (section 259). Demands below 50*l.* may be recovered in the county court (section 261). The proceedings are not to be quashed on *certiorari* (section 262).

7. (1.) Any person aggrieved—

- (a.) By any order, judgment, determination, or requirement of a local authority under this Act ;
- (b.) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act ;
- (c.) By any conviction or order of a court of summary jurisdiction under any provision of this Act ;

Appeals to
quarter
sessions.

may appeal in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions.

This general provision is subject to the qualification contained in the next subsection.

The cases in which an appeal will lie under this provision are indicated in the notes to the several sections.

The provisions of the Summary Jurisdiction Acts as to appeals to quarter sessions are contained in 42 & 43 Vict. c. 49, s. 31, which is set out in the notes to section 269 of the Public Health Act, 1875, *ante*, p. 363.

(2.) This section shall not apply in cases where there is an appeal to the Local Government Board under section two hundred and sixty-eight of the Public Health Act, 1875.

See section 268 of the Public Health Act, 1875, and the notes thereto, *ante*, p. 360.

8. Any information, complaint, warrant, or summons made or issued for the purposes of this Act, or of the Public Health Acts, may contain in the body thereof or in a schedule thereto several sums.

More than one
sum in one
summons, &c.

It is difficult to suggest what is the object of this provision, or what its effect is. The general rule is that an information or complaint must be confined to one

**Note to
Section 8.**

offence or matter of complaint. See 11 & 12 Vict. c. 43, s. 10. Under the above provision one complaint and summons may be used for the recovery of several sums. This may be practicable when the sums claimed are sums recoverable as civil debts, such as expenses; but it may be otherwise in the case of penalties for offences, even if the text should be considered as applying to them, which is very doubtful. It will certainly be prudent in the case of penalties to keep the proceedings for each penalty distinct.

Bye-laws.

9. All the provisions with respect to bye-laws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and any enactment amending or extending those sections, shall apply to all bye-laws from time to time made by a local authority under the powers of this Act, except bye-laws made under Part Two of this Act.

See sections 182—187 of the Public Health Act, 1875, and the notes thereto, *ante*, p. 256.

Bye-laws made under sections 20, 23, 26, 40, and 44 of this Act must be confirmed by the Local Government Board under section 184 of the Public Health Act, 1875. But bye-laws under Part II., must be confirmed by the Board of Trade, see section 13, *post*.

**Powers of act
cumulative.**

10. (1.) All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

See section 341 of the Public Health Act, 1875, *ante*, p. 423.

Notwithstanding this provision, the Act itself creates certain exceptions to it. Thus, where section 23 is in force in any district, section 38 of the Public Health Act, 1875, is repealed in that district; and where section 34 is in force, the 10 & 11 Vict. c. 34, s. 80, is repealed in that district. But the Act does not repeal or even supersede local Acts.

(2.) Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, provided that no person shall be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence.

The expression "daily penalty" is defined in section 11, sub-section (3), *post*.

**Interpreta-
tion.**

11. (1.) The expression "ashpit" in the Public Health Acts and in this Act shall, for the purposes of the execution of those Acts and of this Act include any ashtub or other receptacle for the deposit of ashes, faecal matter, or refuse.

The Public Health Act, 1875, s. 35, *ante*, p. 63, provides that every newly erected house must have an ashpit furnished with proper doors and coverings. By section 36, if a house is without a sufficient ashpit, the owner may be required to provide one. By section 39, an urban authority may provide ashpits for public accommodation. By section 40, an ashpit must be constructed and kept so as not to be a nuisance or injurious to health. By section 41, provision is made for the abatement of a nuisance arising from any defect in an ashpit. Sections 42—44 deal with the cleansing of ashpits. Section 91, *ante*, p. 108, and subsequent sections include, under the definition of nuisances, any ashpit so foul or in such a state as to be a nuisance or injurious to health. In all these sections the expression "ashpit" will have the extended meaning above assigned to it. It seems from the language of the text that an ashpit may be a movable receptacle.

(2.) A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts. Section 11.

Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street.

The first part of the above sub-section appears to have been provided to meet the *dictum* of JESSEL, M.R., in *Attorney-General v. Bidder*, 47 J. P. 263. That learned judge said in the course of the case that a road paved with wood was not "paved" within the meaning of section 152 of the Public Health Act, 1875. See further as to this case the notes to section 41 of this Act, *post*, p. 589.

The second part of the above sub-section is an amendment of sections 150 and 152 of the Public Health Act, 1875. Section 150 of that Act, *ante*, p. 176, provides that when a street, not being a highway repairable by the inhabitants at large, is not (*inter alia*) paved to the satisfaction of the urban authority, notice may be served on the owners of property fronting the street to pave it, and in their default the urban authority may pave the street, and recover the expenses from the owners. The effect of the above sub-section is that an urban authority may require the road to be asphalted or paved with wood, &c., and that though properly paved in one way, it shall not be deemed to be paved to the satisfaction of the urban authority, unless they also consider the kind of paving suitable for the street. Section 152, *ante*, p. 198, provides that when a street is (*inter alia*) paved to the satisfaction of an urban authority, they may declare it to be a highway repairable by the inhabitants at large. Having regard to the text, they have now a discretion as to the kind of paving which they deem suitable for the street. See the notes to section 41, *post*, p. 589.

See further on this subject the provisions of the Private Street Works Act, 1892, *post*.

(3.) In this Act, if not inconsistent with the context(*a*)—

The expression "local authority" means an urban sanitary authority or a rural sanitary authority, as the case may be, under the Public Health Acts, and the expressions "urban authority" and "rural authority" mean respectively an urban sanitary authority and a rural sanitary authority under those Acts.(*b*)

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts.(*b*)

The expression "sanitary convenience" includes urinals, waterclosets, earthclosets, privies, ashpits, and any similar convenience.(*c*)

The expression "daily penalty" means a penalty for each day on which any offence is continued after conviction therefor.(*d*)

The expressions "surveyor," "lands," "premises," "owner," "street," "house," "drain," "sewer," have respectively the same meaning as in the Public Health Acts.(*e*)

(*a*) See as to these words the cases mentioned in the notes to section 4 of the Public Health Act, 1875, *ante*, p. 2. In a recent case in the House of Lords, Lord SELBORNE said: "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense, whenever that would be properly applicable; but to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." *Robinson v. Barton Local Board*, 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 276.

**Note to
Section 11.**

(b) These expressions are defined in sections 6, 9, of the Public Health Act, 1875. See, however, the notes to those sections, and Part II. of the Local Government Act, 1894, *post*.

(c) The expression "sanitary convenience" is a convenient one, including as it does a number of things which are generally grouped together in the Public Health Act, 1875. See, for example, sections 35, 36 of that Act, *ante*, p. 63. The word "ashpit" has now an extended meaning. See sub-section (1), *ante*.

(d) This definition obviates a difficulty which has often been felt where a daily penalty is imposed for every day an offence continues, the question being in such cases whether the daily penalty is incurred before as well as after conviction. See, for example, section 86 of the Public Health Act, 1875, *ante*, p. 104.

(e) In the Public Health Act, 1875, s. 4, all these expressions are defined. See the notes to that section, *ante*, p. 2.

Application
of Act to
Ireland.

41 & 42 Vict.
c. 52.

12. In the application of this Act to Ireland the following modifications shall have effect—

- (1.) Sections five and forty-one shall not apply to Ireland.
- (2.) This Act shall be construed as one with the Public Health (Ireland) Act, 1878.
- (3.) This Act and the Public Health (Ireland) Act, 1878, may be cited as the Public Health (Ireland) Acts.
- (4.) A reference to a place of abode in England shall be construed to be a reference to a place of abode in Ireland.
- (5.) The Local Government Board for Ireland shall be substituted for the Local Government Board.
- (6.) The Chief Secretary shall be substituted for the Secretary of State.
- (7.) The expression "the Public Health Acts" shall include the Public Health (Ireland) Act, 1878, and the said Act shall be substituted for the Public Health Act, 1875, and in particular references in this Act to sections thirty-eight, forty-one, eighty-four, one hundred and sixteen, one hundred and seventeen, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and sixty-five, two hundred and twenty-nine, two hundred and thirty, two hundred and sixty-eight, and three hundred and six of the Public Health Act, 1875, shall be respectively taken to be references to sections forty-eight, fifty-one, ninety-five, one hundred and thirty-two, one hundred and thirty-three, forty-one, forty-two, one hundred and two, two hundred and thirty-two, two hundred and thirty-three, two hundred and sixty-eight, and two hundred and seventy-two of the Public Health (Ireland) Act, 1878, and the references to sections one hundred and sixteen to one hundred and nineteen, and to sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, shall be respectively taken to be references to sections one hundred and thirty-two to one hundred and thirty-five, and to sections two hundred and nineteen to two hundred and twenty-three of the Public Health (Ireland) Act, 1878.
- (8.) In sub-section four of section fifty-one of this Act a notice to the clerk to the licensing justices and to the district inspector of the district in which the house, room, garden, or place, is situated,

or in his absence to the head constable, or if in the Dublin Metropolitan Police District to the superintendent of police of such division, shall be substituted for the notice to the clerk of the licensing justices and to the chief officer of police in the said sub-section mentioned. Section 12.

- (9.) In section fifty-one of this Act as modified by this section the expression "general annual licensing meeting" shall mean annual licensing quarter sessions, and the expressions "licensing justices," "clerk to the licensing justices," "special sessions," and all other expressions defined by the Licensing Acts (Ireland), 1872 to 1874, shall have the same meanings respectively as in the said Acts.
- (10.) Sub-section two of section fifty-two of this Act shall be read and construed as if the words and figures "of the Local Loans Act, 1875, and the Acts amending the same and," and also "by the Metropolitan Board of Works, or the County Council of London, or," were omitted therefrom.
- (11.) The Lord Lieutenant by order made by and with the advice of the Privy Council shall be substituted for Her Majesty by Order in Council.

PART II.

TELEGRAPH, &C., WIRES.(a)

13. (1.) An urban authority may from time to time make, alter, and repeal bye-laws^(b) for prevention of danger or obstruction to the public from posts, wires, tubes, or any other apparatus stretched or placed above, over, along, or across any street,^(c) (whether before or after the adoption of this part of this Act)^(d) for the purpose of any telegraph, telephone, lighting, railway signalling, or other purpose.^(e)

Bye-laws for prevention of danger from telegraph wires, &c.

(a) This part of the Act may be adopted by an urban authority. It cannot be adopted by a rural authority unless they are invested with urban powers for that purpose under section 5, *ante*, p. 562. When this part is adopted in manner provided by section 3, the resolution must be forwarded to the Local Government Board, and to the Board of Trade, as provided by section 3, sub-section (5), *ante*, p. 562.

(b) The provisions of the Public Health Acts do not apply to these bye-laws. See section 9, *ante*, p. 564.

(c) For the definition of the term "street," see section 11, sub-section (3), and the notes thereto.

It should be observed that apart from the provisions of this section an urban authority have no power to prevent the erection of overhead wires in any street which is not vested in them under section 149 of the Public Health Act, 1875, *ante*, p. 169. And even with regard to streets vested in them, they can only do so if the wires interfere with the ordinary user of the street as a street. See the cases of *Wandsworth District Board v. United Telephone Company*, 13 Q. B. D. 904; 53 L. J. Q. B. 449; 51 L. T. (N.S.) 148; 32 W. R. 776; 48 J. P. 676; *Wandsworth District Board v. Postmaster-General*, 4 Nev. & Mac. 401; *Fareham Local Board v. Smith*, 7 T. L. R. 443.

(d) The bye-laws will apply to wires already erected as well as to those erected after the adoption of this part of the Act. See, however, sub-section (6), *infra*.

(e) See the partial exemption of apparatus belonging to a railway or canal company in sub-section (7), *infra*.

**Note to
Section 13.**

The bye-laws made under this section are only for the prevention of danger or obstruction to the public. The observance of them will not necessarily make it lawful to erect wires for the purposes above mentioned. The bye-laws will not in any way enable the promoters of any undertaking to erect wires upon or over private property where that cannot otherwise be legally done.

The bye-laws will not apply to post office wires, or electric lighting wires erected under the Electric Lighting Acts. See section 15, *post*, and the notes thereto.

(2.) By such bye-laws provisions may be made for the inspection and examination by the urban authority of any such posts, wires, tubes, or other apparatus, and for the prohibition of any such posts, wires, tubes, or other apparatus, being or continuing to be stretched or placed as aforesaid in such manner as to be dangerous or to cause obstruction to the public.

It is anticipated that a model code of bye-laws will be issued by the Board of Trade. If not, or until this is done, any code of an urban authority may provide for the inspection and examination of posts or wires, and for the prohibition of these, if causing danger or obstruction. One of the chief causes of danger is the liability of the wires to be blown down or broken by snow; the bye-laws may provide for such a cause of danger.

(3.) Offenders against such bye-laws shall be liable to such penalties as may be thereby prescribed not exceeding five pounds for each offence, and a daily penalty not exceeding forty shillings, and the court, in addition to awarding any penalty, may order the removal of any post, wire, tube, or other apparatus, stretched or placed in contravention of any such bye-law made under this section.

The bye-laws must themselves prescribe the penalties. For the definition of a daily penalty, see section 11, sub-section (3), *ante*, p. 565. The proceedings will be under the Summary Jurisdiction Acts, and an appeal against a conviction or order will lie to quarter sessions under section 7, sub-section (1), *ante*, p. 563.

(4.) Bye-laws made under this section and any alteration or repeal of any such bye-law shall not take effect unless and until they have been submitted to and confirmed by the Board of Trade, which Board is hereby empowered to allow or disallow or to modify or amend the same as it may think proper.

(5.) Reasonable notice of the intended submission for confirmation of any such bye-law, alteration, or repeal shall be given by the urban authority by advertisement in one or more local newspapers circulating in the district to which such bye-laws relate, and by circular letter to any company or person owning or leasing any post, wire, tube, or other apparatus to which any bye-law is intended to apply, and such company or person shall be entitled to appear before the Board of Trade, and object to the confirmation, alteration, or repeal of any bye-law, and all costs incurred by any parties in reference to the application for or objection to the confirmation, alteration, or repeal of any such bye-law, shall be in the discretion of the Board of Trade.

The circular letter must be sent to all owners or lessees of existing posts, wires, &c., other than those mentioned in section 15, *post*. Such owners and lessees will send in their objections, if any, and may appear before the Board of Trade in support of them.

(6.) The Board of Trade may exempt from the operation of any such bye-law, alteration, or repeal, for such period as they think proper, not exceeding five years from the confirmation thereof, any post, wire, tube, or other apparatus, which shall have been stretched or placed, in the case of a new bye-law, before the confirmation thereof, and in the case of the alteration or repeal of a bye-law, in accordance with such bye-law. Section 13.

Unless such exemption is made, the bye-laws will extend to existing wires as well as to those to be erected after the adoption of this part of the Act.

(7.) Nothing in such bye-laws shall extend to or include any apparatus belonging to any railway or canal company, or used by them in connection with their business, and which now is or hereafter shall be fixed or placed by any such company across, over, or along any railway, or the towing path of any canal, provided such apparatus do not project, or be not stretched or placed beyond such railway or towing path over any street, or be not stretched or placed over any street crossing over such railway other than streets crossing any railway on the level.

When a railway crosses a street, the bye-laws will not apply to wires on such railway so long as these do not project beyond the property of the company. Where the street is carried over the railway, the bye-laws will not apply to railway wires unless these are carried above the street. When a street crosses a railway on the level, the bye-laws will not apply to the railway wires even if they do cross the street.

14. (1.) If any post, wire, tube, or other apparatus so exempted as aforesaid (a) is during the period of such exemption in the opinion of the surveyor of the urban authority in such a state or position that immediate danger to any person is to be apprehended, (b) he may give information to any justice, who may thereupon summon the owner or lessee thereof or other person interested therein forthwith to appear before a court of summary jurisdiction. Danger from exempted telegraph wires.

(a) The exemptions here referred to are those mentioned in sub-sections (6) and (7) of the preceding section.

(b) This does not necessarily mean when danger is apprehended to a particular person. The section will apply if immediate danger is apprehended to any person passing along a street.

(2.) The court may thereupon—

(a.) Make an order requiring such owner, lessee, or other person, or all or any of them, to remove or remedy the source of danger ; or

(b.) Make an order authorising the surveyor to do so at the expense of such owner, lessee, or other person, or of all or any of them ; or

(c.) Make such other order as may appear to the court under all the circumstances of the case to be necessary and proper.

An appeal against such an order will lie to quarter sessions, under section 7, *ante*, p. 563.

The expense incurred under sub-section (b) will apparently be recoverable summarily. See section 6, *ante*, p. 563.

15. (1.) Nothing contained in this part of this Act shall—

(a.) Extend to any post, wire, tube, or other apparatus or property of the Postmaster-General. Savings.

Section 15. (b.) Extend to any works of any undertakers within the meaning of the Electric Lighting Acts, 1882 to 1888, to which the provisions of those Acts apply.

The Electric Lighting Acts are 45 & 46 Vict. c. 56 and the 51 & 52 Vict. c. 12, both of which are set out in the Appendix to this Work. These Acts contain important restrictions with regard to the erection of overhead wires. See section 14 of the Act of 1882, and section 4 of the Act of 1888, and the regulations of the Board of Trade made under these Acts.

(2.) Nothing contained in this part of this Act shall limit or interfere with the working of any mines or minerals lying under or adjacent to any street along or across which any posts, wires, tubes, or other apparatus shall be stretched or placed, nor shall the owner, lessee, or occupier of those mines or minerals be liable for any damage which may be occasioned by the working thereof in the ordinary course to such post, wires, tubes, or apparatus.

As to the right of an owner to work minerals under a street vested in the urban authority, see section 27 of the Highway Act, 1878 (41 & 42 Vict. c. 77), in the Appendix, *post*. The object of the above provision appears to be to prevent the owners of posts, wires, &c., erected in compliance with the bye-laws from acquiring any right thereby against the owner of mines or minerals under the street in or over which the posts, wires, &c., are placed. It may be doubted whether the provision was required.

PART III.

SANITARY AND OTHER PROVISIONS.(a)

Injurious matters not to pass into sewers.

16. (1.) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured.(b)

(a) This part of the Act may be adopted by an urban authority. It can only be adopted by a rural authority to the extent mentioned in sections 3 (2) and 50, unless the rural authority be invested with urban powers for that purpose under section 5. Notice of the resolution adopting this part of the Act must be sent to the Local Government Board. See section 3 (5), *ante*, p. 562.

(b) This section may be adopted by a rural authority. See section 50, *post*, p. 593. The provisions of the section will apply to the sending of injurious matter into sewers from house drains as well as from factories.

(2.) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.

As to the recovery of the penalty, see section 6. Appeal against a conviction will lie to quarter sessions under section 7, *ante*, p. 563.

For the definition of a daily penalty, see section 11 (3), *ante*, p. 565.

Chemical refuse, steam, &c., not to be turned into sewers.(a)

17. (1.) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—

(a.) Any chemical refuse, or

- (b.) Any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

Section 17.

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health (b) shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds. (c)

(a) This section may be adopted by a rural authority. See section 50, *post*, p. 593.

(b) The Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7, provides that every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers : Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land or otherwise, of the sewage matter conveyed along such sewers, or which would, from its temperature or otherwise, be injurious in a sanitary point of view : Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

The section of the Rivers Pollution Prevention Act, 1876, above quoted, requires facilities to be given for the sending of liquid refuse from factories into sewers. No facilities can be required to be given for sending solid refuse into sewers, and if any solid refuse is sent into a sewer a remedy may be found in the provisions of section 16 of this Act. Even if facilities are given for receiving liquid refuse, the text will prevent these from being sent into a sewer in the cases above mentioned. In connection with this subject, reference may be made to *St. Helen's Chemical Company v. St. Helen's (Mayor, &c., of)*, 1 Ex. D. 196 ; 45 L. J. M. C. 150 ; 34 L. T. (N.S.) 397 ; 40 J. P. 471. There the appellants were possessed of chemical works, and were entitled to discharge refuse by two separate drains into a public sewer. By the one drain liquid impregnated with muriatic acid was discharged, and by the other drain liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellants' drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices on the appellants :—Held, that the escape of the gas was a nuisance, within the meaning of 18 & 19 Vict. c. 121, s. 8 ; that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance. This case shows that it may sometimes be possible to deal with nuisances in sewers from chemical refuse under the provisions of the Public Health Act, 1875, ss. 91—96 ; but the text gives a remedy which is at once more direct and of wider application. The discharge, for example, of steam or hot water into a sewer has frequently been found to create a nuisance, and after a sanitary authority had given facilities under the Rivers Pollution Prevention Act, 1876, s. 7, *supra*, for receiving it into a sewer it was by no means clear that the nuisance could be dealt with. When the above section is adopted it will be unlawful in any case to turn steam or hot water exceeding in temperature 110 degrees of Fahrenheit into a sewer under any circumstances.

(c) For the definition of a daily penalty, see section 11 (3), *ante*, p. 565.

As to the notice which must be given before proceedings under this section, see sub-section (3), *infra*.

As to the recovery of the penalties, see section 6. Appeal will lie to quarter sessions against a conviction under section 7, *ante*, p. 563.

(2.) The local authority, by any of their officers either generally or specially authorised in that behalf in writing, (a) may enter any premises for the purpose of examining whether the provisions of this section are

Section 17. being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, (b) may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

(a) The authority may be general, *i.e.*, empowering an officer to enter as occasion may arise, or special, *i.e.*, relating to certain premises only. It may be authenticated by the signature of the clerk under section 266 of the Public Health Act, 1875, *ante*, p. 358.

(b) This notice will be a condition precedent to the obtaining of a justice's order.

(3.) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once.

Before a penalty can be proceeded for, the local authority must give notice of the provisions of the section to the offender, and must wait seven days to see if the necessary steps are taken to stop the cause of complaint.

Provision
as to local
authority
making com-
munications
with or
altering, &c.,
drains and
sewers.

18. (1.) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

Section 21 of the Public Health Act, 1875, *ante*, p. 51, provides that an owner or occupier of premises within the district of a local authority shall be entitled to connect his drains with the sewer of such authority upon giving such notice as may be required by the authority, and upon complying with their regulations as to the mode of communication, and subject to the superintendence of their officers. Section 22 entitles the owner or occupier of premises without the district to connect his drains with the sewers in the district upon such terms and conditions as may be agreed upon, or, in case of dispute, may be settled at the option of the owner or occupier by a court of summary jurisdiction, or by arbitration. By the provision in the text, the owner or occupier may require the local authority themselves to make the communication upon payment of the cost in advance. As to the cost see the next sub-section.

(2.) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under fifty pounds, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over fifty pounds have the same determined by arbitration in manner provided by the Public Health Acts.

The estimate is to be made in order to enable the owner or occupier to pay the amount in advance. No provision is made for the case when the actual cost is less or

more than the estimated sum ; and it is not clear that the owner or occupier in the one case or the local authority in the other can recover the difference.

The expression "court of summary jurisdiction" is defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, to mean any justice or justices or other magistrate authorised to act under the Summary Jurisdiction Acts, whether acting under these Acts or under any other Act. It seems to follow from section 20 of the Summary Jurisdiction Act, 1879, that a case arising under the text must be determined in open court, *i.e.*, by two or more justices sitting in a petty sessional or an occasional court-house.

The provisions of the Public Health Act, 1875, as to arbitration are contained in sections 179, 180 of that Act, *ante*, p. 250.

(3.) A local authority may agree with the owner of any premises that any sewer or drain which such owner is required, or desires, to make, alter, or enlarge, or any part of such sewer or drain, shall be made, altered, or enlarged by the local authority.

The owner of a house which has no sufficient drain for effectual drainage may be required to provide a proper drain under section 23 of the Public Health Act, 1875, *ante*, p. 54. By section 25 of the same Act it is unlawful to build or rebuild a house in an urban district or to occupy a house which has been newly built or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the urban authority to be necessary for the effectual drainage of such house ; and such drain or drains are to empty into a sewer if there is one within 100 feet, otherwise into a covered cesspool or as the urban authority may direct. In any of these cases the owner may agree with the local authority for the execution of the necessary work. It does not appear that an owner may be required to alter or enlarge any drain unless it is insufficient within the meaning of section 23, or is a nuisance within the meaning of section 91 of the Public Health Act, 1875. In any case, however, when the owner desires to make, alter, or enlarge a drain, he may agree with the local authority under the provisions contained in the text.

19. (1.) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain, ^(b) an application may be made under section forty-one of the Public Health Act, 1875 (relating to complaints as to nuisances from drains), ^(b) and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses ^(c) in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction.

Extension of
38 & 39 Vict.
c. 55, s. 41.(a)

(a) This section may be adopted by a rural authority. See section 50, *post*, p. 593.

(b) Under the Public Health Act, 1875, ss. 4, 13, a drain which receives the drainage of two or more houses is a sewer (see the note to section 4, *ante*, p. 18), and is vested in the local authority, and it is the duty of the local authority to repair, cleanse, and keep it so as not to be a nuisance or injurious to health (see sections 15, 19, of that Act). This is still the law with respect to a drain which receives the drainage of two or more houses belonging to the same owner. When the houses belong to different owners, the provisions of the text make an important modification in the law.

The decisions, however, upon the extent of the modification are conflicting.

In *Self v. Hove Commissioners* [1895], 1 Q. B. 685 ; 64 L. J. M. C. 217 ; 72 L. T. (N.S.) 234 ; 43 W. R. 300 ; 59 J. P. 103, two houses belonging to different owners were connected with a public sewer by a single private drain. The local authority of the district, who had adopted the Act of 1890, served upon one of the owners a notice under the Act of 1875, addressed to both, requiring them to abate a nuisance arising from the drain by doing certain works and stating that unless the nuisance were abated the local authority would proceed to enforce the abatement and recover

**Note to
Section 19.**

costs and penalties. The owner upon whom such notice was served accordingly did the works, and brought an action against the local authority to recover the costs as money paid at their request. And it was held that the notice given by the defendants to the plaintiff was not a request to do the work which would support the action; that no such request could be implied, because the defendants were not themselves compellable to do the work, and under section 41 of the Act of 1875, and section 19 of the Act of 1890, could have compelled the owners to do it, and that therefore the defendants were not liable. But in *Hill v. Hair* [1895], 1 Q. B. 906; 64 L. J. M. C. 164; 72 L. T. (N.S.) 629; 43 W. R. 651; 59 J. P. 374, by a system of drainage established before 1848, a single brick drain on the respondent's premises conveyed the drainage of his house and of other houses belonging to different owners into an adjacent ditch. In 1853 the local authority of the district substituted for the ditch a public sewer, and the brick drain was connected with it. In 1887 a local Act was passed which provided that where two or more houses were connected with a single private drain which conveyed their sewage into a public sewer, the local authority should have all the powers conferred by section 41 of the Public Health Act, 1875. The local authority had also adopted section 19 of the Act of 1890. But it was held that the brick drain was not a single private drain within the meaning of the local Act or the Act of 1890, because on the passing of the Public Health Act, 1848, such drain became and had ever since been a sewer vested in the local authority, and repairable by them, and that, therefore, they were not entitled to exercise against the respondent the powers conferred on them by section 41 of the Act of 1875.

(c) The following are the provisions of the Public Health Act, 1875, s. 41, omitting immaterial words. (For the section *in extenso*, see *ante*, p. 68.) On the written application of any person to a local authority, stating that any drain, water-closet, earthcloset, privy, ashpit, or cesspool, on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain, watercloset, earthcloset, privy, ashpit, or cesspool. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses.

As to the recovery of the expenses, see the next sub-section. The owners may be liable to penalties under section 41, as well as to pay the expenses incurred in default of compliance with the notice.

This gives a right of appeal from the surveyor to a court of summary jurisdiction, as to which see the note to section 18, sub-section (2), *ante*, p. 573.

(2.) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly.

It may be doubted whether this express provision was necessary, having regard to the concluding words of section 41 of the Public Health Act, 1875.

Private improvement expenses are recoverable by improvement rates under sections 213—215, 232, of the Public Health Act, 1875, *ante*, pp. 291, 314. An appeal will not lie under this section to quarter sessions; the only appeal is to the Local Government Board, under section 7, *ante*, p. 563.

(3.) For the purposes of this section the expression "drain" includes Section 19.
a drain used for the drainage of more than one building.

The provisions of sub-section (1) and of this sub-section appear to make the word "drain" applicable to a drain which receives the drainage of two or more houses belonging to different owners. Such a drain would formerly have been a sewer, and as such vested in, and repairable by the local authority, and there was not such a thing as a single *private* drain of this kind if the word *private* means not vested in the local authority. Many questions now arise as to what limit is to be placed upon the provisions in the text. A pipe of any length receiving sewage from many houses may be within the section. And query, how far does it affect the vesting of sewers in the local authority when these have not been constructed or in some way adopted by the local authority? Such doubts render it very difficult to put the section in operation. See the note to section 13 of the Public Health Act, 1875, *ante*, p. 32, and the cases cited in the notes to sub-section (1), *supra*.

20. (1.) Where an urban authority(*a*) provide and maintain for public accommodation any sanitary conveniences, (*b*) such authority may— Sanitary conveniences for public accommodation.

- (i.) Make regulations with respect to the management thereof(*c*) and make bye-laws as to the decent conduct of persons using the same; (*d*)
- (ii.) Let the same from time to time for any term not exceeding three years at such rent and subject to such conditions as they may think fit; (*e*)
- (iii.) Charge such fees for the use of any waterclosets provided by them as they may think proper.

(*a*) This section applies only to urban authorities. It cannot be adopted by a rural authority. See section 50, *post*, p. 593.

(*b*) Sanitary conveniences are defined by section 11 (3), *ante*, p. 565, to include urinals, waterclosets, earthclosets, privies, ashpits, and any similar conveniences. An urban authority may provide and maintain these for public accommodation, under section 39 of the Public Health Act, 1875, *ante*, p. 66, and under section 45 of the same Act, *ante*, p. 73, they may provide receptacles for the temporary deposit and collection of dust, ashes, and rubbish. As to the extended meaning of "ashpit," see section 11, sub-section (1), *ante*, p. 564. To these conveniences the provisions in the text will apply.

(*c*) Regulations are made under section 188 of the Public Health Act, 1875, *ante*, p. 259, and require no confirmation.

(*d*) Bye-laws are made in manner provided by section 9, *ante*, p. 564, and must be confirmed by the Local Government Board.

(*e*) This seems to imply that the use of the conveniences, or any of them, may be charged for by the lessee, though the urban authority seem only to have power themselves to charge for the use of waterclosets.

(2.) No public sanitary convenience shall, after the adoption of this part of this Act, be erected in or accessible from any street without the consent in writing of the urban authority, who may give such consent upon such terms as to the use thereof or the removal thereof at any time, if required by the urban authority, as they may think fit.

A sanitary convenience could never be erected in a street vested in the urban authority without their consent. See section 149 of the Public Health Act, 1875, *ante*, p. 169. And even in a street so vested, if dedicated to the public, it could not be erected so as to be an obstruction. Now, however, the urban authority adopting this part of the Act will have absolute control over the erection of a public convenience in any street

**Note to
Section 20.**

(including private streets ; see the note to section 11 (3), *ante*, p. 566), or on private property, but accessible from any street. The urban authority may give or withhold their consent altogether or upon terms.

An appeal to quarter sessions will lie under section 7, *ante*, p. 563, by any person aggrieved by the withholding of consent under this section.

Reference may be made to *Wellstead v. Paddington Vestry*, 40 W. R. 254, decided with reference to a local Act in the metropolis.

(3.) Any person who erects a sanitary convenience in contravention of this enactment, and after a notice in writing to that effect from the urban authority does not remove the same, shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding twenty shillings.

As to the definition of "daily penalty" see section 11 (3), *ante*, p. 565.

As to the recovery of the penalty see section 6. Appeal against a conviction will lie to quarter sessions under section 7, *ante*, p. 563.

(4.) Nothing in this section shall extend to any sanitary convenience now or hereafter to be erected by any railway company within their railway station yard or the approaches thereto.

Sanitary con-
veniences
used in com-
mon.(a)

21. With respect to any sanitary convenience(*b*) used in common by the occupiers of two or more separate dwelling-houses,(*c*) or by other persons, the following provisions shall have effect :—

(1.) If any person injures or improperly fouls any such sanitary convenience, or anything used in connection therewith, he shall for every such offence be liable to a penalty not exceeding ten shillings.(*d*)

(a) This sub-section may be adopted by a rural authority ; see section 50, *post*.

(b) For the definition of a "sanitary convenience" see section 11 (3), *ante*, p. 565.

(c) It should be remembered that the Public Health Act, 1875, does not require a separate watercloset, earthcloset, or privy for every individual house. *Clutton Union (Guardians of) v. Pointing*, 4 Q. B. D. 340 ; 48 L. J. M. C. 135 ; 40 L. T. (N.S.) 844 ; 27 W. R. 658 ; 43 J. P. 686.

(d) As to the recovery of this penalty, see section 6. Appeal lies against conviction to quarter sessions under section 7, *ante*, p. 563.

(2.) If any sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are in the opinion of the urban authority or of the inspector of nuisances or medical officer of health of such authority in such a state or condition as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as aforesaid as may be in default, or in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a penalty not exceeding ten shillings, and to a daily penalty not exceeding five shillings.

See the notes to the preceding sub-section.

For the definition of a "daily penalty," see section 11 (3), *ante*, p. 565.

Sanitary
conveniences

22. (1.) Every building used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or

business, whether erected before or after the adoption of this part of this Act in any district, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, (b) having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed, or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex. Section 22.
for manu-
factories,
&c.(a)

(a) This section cannot be adopted by a rural authority unless they are invested with urban powers for that purpose. See section 3 (2), section 5, and section 50.

Where this section is in force it is intended to be in substitution for section 38 of the Public Health Act, 1875, *ante*, p. 65. See sub-section (4), *infra*. Where it is not in force, then from and after the 1st January, 1896, the provisions of section 22 of the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), in the Appendix, *post*, will be in force.

(b) The term "sanitary convenience" includes urinals, waterclosets, earthclosets, privies, ashpits, and any similar conveniences (section 11 (3)). For the extended meaning of "ashpit," see section 11 (1), *ante*, p. 564.

(2.) Where it appears to an urban authority on the report of their surveyor (a) that the provisions of this section are not complied with in the case of any building, the urban authority may, if they think fit, by written notice, (b) require the owner or occupier of any such building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as aforesaid.

(a) The report of the surveyor is a condition precedent to proceedings under this section. The surveyor must be the fit and proper person duly appointed to be surveyor under section 189 of the Public Health Act, 1875, not a person performing the duties of the surveyor *pro. tem.* See *Lewis v. Weston-super-Mare Local Board*, 40 Ch. D. 55; 58 L. J. Ch. 39; 59 L. T. (N.S.) 769; 37 W. R. 121; 5 T. L. R. 1.

(b) This notice may be authenticated by the signature of the clerk or surveyor. See section 266 of the Public Health Act, 1875, *ante*, p. 358.

(3.) Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding forty shillings.

As to the recovery of this penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 563.

For the definition of "daily penalty," see section 11 (3), *ante*, p. 565.]

(4.) Where this section is in force, section thirty-eight of the Public Health Act, 1875, shall be repealed.

See the provisions of the section referred to, *ante*, p. 65.

It may be added that by section 4 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), where it appears to an inspector under that Act that any act, neglect, or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health and not under that Act, the inspector shall give notice in writing of such act, neglect, or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice and take such action thereon as to that authority may seem proper for the purpose of enforcing the law. The inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority. See this section with notes in the Appendix, *post*.

23. (1.) Section one hundred and fifty-seven of the Public Health Act, 1875, (b) shall be extended so as to empower every urban Extension of
38 & 39 Vict.
c. 55, s. 157.(a)

Section 23. authority to make bye-laws with respect to the following matters ; that is to say :—

The keeping waterclosets supplied with sufficient water for flushing ;(c)

The structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation ;

The paving of yards and open spaces in connection with dwelling-houses ; and

The provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters.

(a) This section may be adopted by rural sanitary authorities to the extent mentioned in sub-section (3).

(b) Section 157 of the Public Health Act, 1875, *ante*, p. 204, enables an urban authority to make bye-laws with respect to certain matters ; that is to say :—

(1.) With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof (and now, where the above section is adopted, with respect to the provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters) :

(2.) With respect to the structure of walls, foundations, roofs, and chimneys of new buildings, for securing stability and the prevention of fires, and for purposes of health (and now, where the above section is adopted, with respect to the structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation) :

(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings (and now, where the above section is adopted, with respect to the paving of yards and open spaces in connection with dwelling-houses) :

(4.) With respect to the drainage of buildings, to waterclosets, earthclosets, privies, ashpits, and cesspools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation (and now, where the above section is adopted, with respect to the keeping waterclosets supplied with sufficient water for flushing).

And they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) to remove, alter, or pull down any work begun or done in contravention of such bye-laws : Provided that no bye-laws made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment. The provisions of this section shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament.

For the notes to section 157 of the Public Health Act, 1875, see *ante*, p. 204.

As to the making of bye-laws, see section 9, *ante*, p. 564.

(c) Where there are no bye-laws of this kind in force, the only way in which proper flushing apparatus can be enforced is by proceeding under section 36 of the Public Health Act, 1875, on the ground that the watercloset is insufficient. See the case of *Sherborne Local Board v. Bogle*, *ante*, p. 64.

(2.) Any bye-laws under that section as above extended with regard to the drainage of buildings, and to waterclosets, earthclosets, privies,

ashpits, and cesspools, in connection with buildings, and the keeping of waterclosets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section. Section 23.

The times mentioned in section 157 are those mentioned in the first proviso which is set out in the note to the preceding section. The meaning of the provision in the text is that the bye-laws above described may be applied to all buildings already erected, as well as to new buildings.

(3.) The provisions of the said section (as amended by this Act), so far as they relate to bye-laws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to the matters mentioned in sub-sections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of waterclosets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make bye-laws in respect to the said matters, and to provide for the observance of such bye-laws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of an order of the Local Government Board made on the day when this part of this Act is adopted; and section one hundred and fifty-eight of the Public Health Act, 1875, shall also apply to any such authority, and shall be in force in every rural district where this part of this Act is adopted.

Section 157 of the Public Health Act, 1875, *ante*, p. 204, applied only to urban authorities. It will now apply to rural authorities who adopt this section to the extent mentioned in the text.

The order of the Local Government Board above referred to is an order such as might be made under section 5, *ante*, p. 562.

Section 158 of the Public Health Act, 1875, *ante*, p. 217, provides as follows:—Where a notice, plan, or description of any work is required by any bye-law made by an urban authority to be laid before that authority, the urban authority shall, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed. Where an urban authority incur expenses in or about the removal of any work executed contrary to any bye-law, such authority may recover in a summary manner the amount of such expenses, either from the person executing the works removed, or from the person causing the works to be executed, at their discretion. Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken. See the notes to this section, *ante*, p. 217.

(4.) Every local authority may make bye-laws to prevent buildings which have been erected in accordance with bye-laws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the bye-laws.

This sub-section contains an important provision which supplies a defect in the previous legislation. By section 159 of the Public Health Act, 1875, *ante*, p. 222, a

**Note to
Section 23.**

new building is deemed to include the conversion into a dwelling-house of a building not originally constructed for human habitation ; and such a conversion brought the building within the bye-laws as to new buildings. But there was nothing to prevent the conversion of a dwelling-house into a public building or a building of the ware-house class, although when so used it contravened the bye-laws applicable to such buildings. The adoption of this section will remove this defect.

Rooms over
privies, &c.,
not to be used
as dwelling
or sleeping
rooms.(a)

24. (1.) Where any portion of a room extends immediately over any privy (not being a watercloset or earthcloset), or immediately over any cesspool, midden, or ashpit.(b) that room, whether built before or after the adoption of this part of this Act, shall not be occupied as a dwelling-place, sleeping-place, or workroom, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night.

- (a) This section cannot be adopted by a rural authority. See section 50, *post*, p. 593.
(b) See the definition of "ashpit" in section 11 (1), *ante*, p. 364.

(2.) Any person who after the expiration of one month after the adoption of this part of this Act, and after notice from the local authority of not less than seven days, so occupies, and any person who suffers to be so occupied, any such room, shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding ten shillings.

As to the recovery of this penalty, see section 6. Appeal against the conviction lies to quarter sessions under section 7, *ante*, p. 563.

For the definition of "daily penalty," see section 11 (3), *ante*, p. 565.

Penalty for
erecting
buildings on
ground filled
up with
offensive
matter.(a)

25. (1.) It shall not be lawful to erect a new building(b) on any ground which has been filled up with any matter impregnated with fæcal, animal, or vegetable matter, or upon which any such matter has been deposited, unless and until such matter shall have been properly removed by excavation or otherwise, or shall have been rendered or have become innocuous.

- (a) This section may be adopted by a rural authority. See section 50, *post*, p. 593.
(b) An extended meaning is given to this term by section 159 of the Public Health Act, 1875, *ante*, p. 222. It includes a building pulled down and rebuilt.

(2.) Every person who does, or causes or wilfully permits to be done, any act in contravention of this section shall for every such offence be liable to a penalty not exceeding five pounds, and a daily penalty not exceeding forty shillings.

For the recovery of this penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 563.

For the definition of a "daily penalty," see section 11 (3), *ante*, p. 565.

Power to
make bye-
laws for
certain
sanitary
purposes.

26. (1.) An urban authority(a) may make bye-laws(b) in respect of the following matters, namely :—

- (a.) For prescribing the times for the removal or carriage through the streets of any fæcal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district ;
(b.) For providing that the vessel, receptacle, cart, or carriage used

therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid ; Section 26.

(c.) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage.(c)

(a) This sub-section cannot be adopted by a rural authority, though sub-section (2) may be adopted by them. See section 50, *post*, p. 593.

(b) As to the making of bye-laws, see section 9, *ante*, p. 564.

(c) The provisions of this sub-section appear to be supplemental to section 44 of the Public Health Act, 1875, which provides that where a local authority do not themselves undertake or contract for the removal of house refuse or the cleansing of earthclosets, privies, ashpits, and cesspools, they may make bye-laws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupiers of premises. See that section and the notes thereto, *ante*, p. 71.

(2.) Where a local authority themselves undertake or contract for the removal of house refuse they may make bye-laws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the local authority undertake or contract for.

This sub-section may be adopted by a rural authority. See section 50, *post*, p. 593. This provision is supplemental to section 42 of the Public Health Act, 1875, *ante*, p. 69, which provides that every local authority may, and when required by the Local Government Board shall, themselves undertake or contract for the removal of house refuse from premises.

As to the making of the bye-laws, see section 9, *ante*, p. 564.

27. (1.) Where any court, or where any passage leading to the back of several buildings in separate occupations, and not being a highway repairable by the inhabitants at large,(b) is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the urban authority, the urban authority may, if they think fit, cause to be swept and cleaned such court or passage. Provision for keeping common courts and passages clean.(a)

(a) This section cannot be adopted by a rural authority. See section 50, *post*, p. 593.

(b) As to the meaning of these words, see the notes to section 150 of the Public Health Act, 1875, *ante*, p. 176. In determining whether a place is a highway repairable by the inhabitants at large, regard should first be had to the time when dedication took place. In a case where there was dedication and user before 1836, when the Highway Act, 1835, came into operation, the road or place became *ipso facto* repairable by the parish, *i.e.*, the inhabitants at large. Where, on the other hand, the dedication took place after 1836, no such liability is imposed on the parish unless the formalities prescribed by 5 & 6 Will. 4, c. 50, s. 23, have been observed, or there has been adoption by an urban authority under the Public Health Acts. See per BLACKBURN, J., in *Reg. v. Dukinfield*, 32 L. J. M. C. 230; 4 B. & S. 158; 27 J. P. 805. And see *Eyre v. New Forest Highway Board*, 56 J. P. 517. Where there has been dedication since 1836 without such formalities or subsequent adoption there is really no one liable to repair. See *Reg. v. Wilson*, 18 Q. B. 348; 21 L. J. Q. B. 281; *Roberts v. Hunt*, 15 Q. B. 17; *Fawcett v. York and North Midland Railway Company*, 16 Q. B. 614; *Cubitt v. Mawse*, L. R. 8 C. P. 704; 42 L. J. C. P. 278; 29 L. T. (N.S.) 244; 21 W. R. 789.

(2.) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the passage leads in such shares as may be determined by the surveyor of the urban authority, or (in case of dispute) by a court of

Section 27. summary jurisdiction, (a) and in default of payment any share so apportioned may be recovered summarily from the occupier on whom it is apportioned. (b)

(a) See the note to similar words in section 18 (2), *ante*, p. 572.

(b) As to the recovery of the expenses, see section 6. Appeal against the order for payment will lie under section 7, *ante*, p. 563.

Extension of
38 & 39 Vict.
c. 55, ss. 116—
119.

28. (1.) Sections one hundred and sixteen to one hundred and nineteen of the Public Health Act, 1875 (relating to unsound meat), shall extend and apply all articles intended for the food of man sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale within the district of any local authority.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

The Public Health Act, 1875, s. 116, *ante*, p. 136, provides that any medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any "animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk" exposed for sale or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal, &c., appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant in order to have the same dealt with by a justice. By section 117, *ante*, p. 138, if it appears to the justice that any animal, &c., so seized is diseased, &c., he shall condemn the same and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding 20*l.* for every animal, &c., so condemned, or, at the discretion of the justice without the infliction of a fine, to imprisonment for a term of not more than three months. The convicting justice may be either the justice who ordered the animal, &c., to be disposed of or destroyed or any other justice having jurisdiction in the place. Section 118 imposes a penalty not exceeding 5*l.* on any person who prevents the medical officer or inspector from entering any premises and inspecting any animal, &c., as aforesaid, or who obstructs or impedes them when carrying into execution the provisions of the Act. Section 119 empowers a justice to grant a search warrant to an officer of the local authority to enter premises in which there is reason to believe that there is any such animal, &c., as aforesaid.

For the cases decided upon these sections, see *ante*, pp. 136—138.

Where the provision in the text is adopted, the provisions of these sections are extended to all articles of food besides those expressly enumerated. Formerly, these sections did not apply to such things as eggs, butter, cheese, &c.

(2.) A justice may condemn any such article, and order it to be destroyed or disposed of, as mentioned in section one hundred and seventeen of the Public Health Act, 1875, if satisfied, on complaint being made to him that such article is diseased, unsound, unwholesome, or unfit for the food of man, although the same has not been seized as mentioned in section one hundred and sixteen of the said Act.

The effect of section 117 of the Public Health Act, 1875, *ante*, p. 138, has been already stated in the note to the preceding sub-section.

The object of the enactment seems to be to meet cases where the seizure of the meat has not been in all respects in conformity with the requirements of section 116. For example, in one case a butcher exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards, at the request of the appellant, an inspector of nuisances, handed it over to him, and it was condemned by a justice as unfit for the food of man. It was held that it was not seized and condemned in manner provided by section 116, and that

the butcher could not be convicted. *Vinter v. Hind*, 10 Q. B. D. 63; 31 W. R. 198; 48 L. T. (N.S.) 359; 47 J. P. 373.

**Note to
Section 28.**

29. Licenses granted after the adoption of this part of this Act for the use and occupation of places as slaughter-houses shall be in force for such time or times only, not being less than twelve months, as the urban authority shall think fit to specify in such licenses. Duration of
licenses.

This section cannot be adopted by a rural authority (see section 50, *post*, p. 593) except pursuant to urban powers granted under section 5, *ante*, p. 562.

Section 169 of the Public Health Act, 1875, *ante*, p. 234, provides that for the purpose of enabling an urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses shall be incorporated with that Act. These incorporated provisions are contained in the Act 10 & 11 Vict. c. 34, ss. 125, 131, *post*. They provide that no new slaughter-house shall be opened or used without a license from the urban authority. Those slaughter-houses which existed before 1875 require only to be registered. It was formerly doubtful whether a license when granted could be limited in point of time, for if not it could not be revoked except by justices on conviction of the licensee for an offence under section 129. Where the above provision is in force the doubt will be removed at least with respect to licenses granted after the adoption of this part of the Act. Such licenses may in future be granted for a limited time, not less than twelve months.

Appeal to quarter sessions will lie against the refusal to renew a license. See section 7, *ante*, p. 563.

30. (1.) Upon any change of occupation of any building within an urban sanitary district registered or licensed for use and used as a slaughter-house, the person thereupon becoming the occupier or joint occupier shall give notice in writing of the change of occupation to the inspector of nuisances. Notice of
change of
occupation of
slaughter-
house.

This section cannot be adopted by a rural authority except in pursuance of urban powers granted for the purpose. See sections 5, 50.

A slaughter-house license differs from most other licenses in that it is granted for certain premises and enures for the benefit of succeeding occupiers. See 10 & 11 Vict. c. 34, s. 126, *post*. Similarly the registration of existing premises under section 127 enures for the benefit of succeeding occupiers. Any change of occupation must in future be notified to the inspector of nuisances, who is one of the persons mentioned in section 131 as being entitled to enter and inspect slaughter-houses.

(2.) A person who fails or neglects to give such notice within one month after the change of occupation occurs shall be liable to a penalty not exceeding five pounds.

As to the recovery of this penalty, see section 6, *ante*, p. 562. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 562.

(3.) Notice of this enactment shall be endorsed on all licenses granted after the adoption of this part of this Act.

It should be noticed, however, that sub-section (1) applies to all licenses, whether granted before or after the adoption of this part of the Act.

31. If the occupier of any building licensed as aforesaid to be used as a slaughter-house for the killing of animals intended as human food is convicted by a court of summary jurisdiction of selling or exposing for sale, or for having in his possession, or on his premises, the carcase of any animal, or any piece of meat or flesh diseased, or unsound, or Revocation of
license on
conviction
for sale of
meat unfit
for food.

Section 31. unwholesome, or unfit for the use of man as food, the court may revoke the license.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See section 50, *post*, p. 593.

This section is not accurately expressed. The occupier of a slaughter-house cannot be convicted of merely having in his possession or on his premises a carcase, or meat, which is diseased, &c., unless it is also deposited for the purpose of sale, or of preparation for sale, and intended for the food of man. See section 117 of the Public Health Act, 1875, *ante*, p. 138. The provision in the text seems to be intended to apply to the owner of a slaughter-house who is convicted under section 117 of the Act of 1875, and perhaps also under the bye-laws of a municipal borough, or under a local Act.

Appeal will lie to quarter sessions under section 7, *ante*, p. 563, against the order of justices revoking a license under this section.

It should be mentioned that justices have power under 10 & 11 Vict. c. 34, s. 129, to suspend or revoke a license on conviction for an offence against that Act, or under the bye-laws made under section 128.

Extension of
38 & 39 Vict.
c. 55, s. 84.

32. Any keeper of a common lodging-house who fails to give the notice required by section eighty-four of the Public Health Act, 1875, shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding five shillings.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

The Public Health Act, 1875, s. 84, *ante*, p. 103, provides that the keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated. By section 86, any keeper of a common lodging-house who fails to give the notices required by that Act where any person has been confined to his bed in such house by fever or other infectious disease shall be liable to a penalty not exceeding 5*l.*, and in the case of a continuing offence to a further penalty not exceeding 40*s.* for every day during which the offence continues.

It seems to have been thought that no penalty for a breach of section 84 was provided. The only effect of the text will be, when it is in force, to reduce the penalties. When it is not in force, section 86 will still apply.

As to the definition of a "daily penalty," see section 11 (3), *ante*, p. 565.

Buildings
described in
deposited
plans other-
wise than as
dwelling-
houses not
to be used as
such.

33. (1.) Where the plan of a building has been, either before or after the adoption of this part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or bye-law, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

The bye-laws made under section 23 (4), *ante*, p. 579, may provide for preventing buildings erected for the purpose of warehouses or public buildings being *altered* into dwelling-houses. The text forbids their occupation, though unaltered, by any person other than a caretaker and his family, subject, however, to the proviso contained in the next sub-section.

As to the recovery of the penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 563.

For the definition of a "daily penalty," see section 11 (3), *ante*, p. 565.

Section 33.

(2.) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or bye-law for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house.

The proviso as to air space must be complied with ; the local authority cannot dispense with it.

The alterations must be made in conformity with any bye-laws made under section 23 (4), *ante*, p. 579.

If the local authority withhold their consent, appeal will lie to quarter sessions under section 7, *ante*, p. 563.

34. (1.) Every person intending to build or take down any building, or to alter or repair the outward part of any building in any street or court, *(b)* shall—

Hoards to be set up during progress of buildings, &c. *(a)*

- (a.)* Before beginning the same, unless the urban authority otherwise consent in writing, cause close-boarded hoards or fences to the satisfaction of the urban authority to be put up in order to separate the building from the street or court ;
- (b.)* If the urban authority so require, make a convenient covered platform and handrail to serve as a footway for passengers outside of such hoard or fence ;
- (c.)* Continue such hoard or fence, with such platform and hand-rail as aforesaid, standing and in good condition to the satisfaction of the urban authority during such time as they may require ;
- (d.)* If required by the urban authority, cause the same to be sufficiently lighted during the night ;
- (e.)* Remove the same when required by the urban authority. *(c)*

(a) This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5 and 50.

(b) For the definition of "street," see *ante*, p. 12. The term "street" includes "court" if it has the meaning assigned to it in the interpretation clause. The use of the latter expression seems to imply that the word "street" is here used in its ordinary popular sense of a road with houses on one or both sides.

(c) When the provisions of this section are adopted they are to be in substitution for those of 10 & 11 Vict. c. 34, s. 80, which is incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 223. (See sub-section (3), *infra*.) The 10 & 11 Vict. c. 34, s. 80, is set out in the Appendix, *post*.

(2.) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

As to the recovery of these penalties, see section 6, *ante*, p. 563. Appeal against conviction lies to quarter sessions under section 7.

For the definition of a "daily penalty," see section 11 (3), *ante*, p. 565.

(3.) Where this part of this Act is adopted the eightieth section of the 10 & 11 Vict. Towns Improvement Clauses Act, 1847, shall be repealed, and this section *c. 34.* shall be deemed to be substituted therefor.

The 10 & 11 Vict. c. 34, s. 80, is set out in the Appendix, *post*.

Section 35.

As to repair
of cellars
under
streets.(a)

35. (1.) All vaults, arches, and cellars under any street,(b) and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal-holes in the surface of any street, and all landings, flags, or stones of the path or street, supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong.(c)

(a) This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

(b) For the definition of a street, see *ante*, p. 12.

(c) This provision is entirely new. By section 73 of the 10 & 11 Vict. c. 34, as amended by section 160 of the Public Health Act, 1875, when any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier or owner of such vault or cellar, of iron or such other materials and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

In the metropolis, though owners are required by 18 & 19 Vict. c. 120, s. 102, to keep in repair arches, vaults, and cellars under any street, it was held that the vestry, as highway surveyors, were bound to repair the pavement over vaults or cellars. *Hamilton v. St. George's, Hanover Square (Vestry of)*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 29 L. T. (N.S.) 428; 22 W. R. 86; 38 J. P. 405. Under the provision in the text the owners or occupiers will be liable to repair not only the vaults or cellars and the cellar heads, gratings, &c., but also the landings, flags, or stones supporting such cellar-heads, &c.

(2.) Where any default is made in complying with the provisions of this section, the urban authority may, after twenty-four hours' notice in that behalf,(a) cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner.(b)

(a) This notice should be authenticated by the signature of the clerk or surveyor. See section 266 of the Public Health Act, 1875, *ante*, p. 358.

(b) As to the recovery of these expenses, see section 6, *ante*. An appeal will lie to quarter sessions against the order of the justices for payment. See section 7, *ante*, p. 563.

Means of ingress to and egress from places of public resort.(a)

36. (1.) Every building which, after the adoption of this part of this Act in any urban district, is used(b) as a place of public resort,(c) shall, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe, and convenient means of ingress, and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein.(d)

(a) This section cannot be adopted by a rural authority except in pursuance of urban powers granted for the purpose. See sections 5, 50.

(b) This does not mean "first used." The section will apply to all buildings, whenever erected, which may be used as places of public resort after the adoption of this part of the Act.

(c) For the definition of this term, see sub-section (6), *infra*.

(d) It seems to follow from this enactment that it will not be safe to use any building as a place of public resort after the adoption of this section without a pre-

vious expression of satisfaction by the urban authority. Appeal to quarter sessions will lie against their refusal of approval or against any requirement made by them. See section 7, *ante*, p. 563.

**Note to
Section 36.**

(2.) The means of ingress and egress shall during the whole time that such building is used as a place of public resort be kept free and unobstructed to such extent as the urban authority shall require.

This implies that the urban authority shall consider with reference to every place of public resort whether it is substantially constructed and supplied with means of egress and ingress to their satisfaction. If it is it may lawfully be used, but subject to the observance of the requirements of the urban authority as to the keeping of such means of ingress and egress free and unobstructed. Appeal will lie to quarter sessions under section 7 against any requirement of the urban authority under the above sub-section.

(3.) An officer authorised in writing by the urban authority, and producing his authority if so required, may at all reasonable times enter any such building to see that the provisions of this section are carried into effect.

This authority may be given generally. The resolution conferring the authority should be entered on the minutes, and the authority itself should be authenticated by the signature of the clerk under section 266 of the Public Health Act, 1875, *ante*, p. 358.

(4.) Any person who being the occupier or manager, or in the case of a building let for any period less than one year the owner of any building used as aforesaid, uses the same or suffers the same to be used in contravention of this section, or fails to comply with the provisions of this section in respect thereof, shall for every such offence be liable to a penalty not exceeding twenty pounds.

The owner is the person liable where the building is let for short periods of less than a year.

As to the recovery of the penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7.

(5.) Where any alteration in the building is required in order to give proper means of ingress or egress, the court may refuse to inflict a penalty for an offence under this section until a reasonable time has been allowed for making such alteration, but the court may make such order as they think fit for the closing, or otherwise, of the building during such time.

The court will probably act under this provision where the owner or occupier has not had an opportunity of making the necessary alteration. If the alteration is made the court may dismiss the information without convicting, or inflict a nominal penalty under section 16 of the Summary Jurisdiction Act, 1879.

The court may make an order for closing the building, or they may impose conditions as to its use pending the required alterations. Appeal to quarter sessions will lie against this order under section 7.

(6.) For the purposes of this section the expression "place of public resort" means a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition-room, or as a public place of assembly for persons

Section 36. admitted thereto by tickets or by payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally, for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this part of this Act.

Safety of plat-
forms, &c.,
erected or used
on public
occasions.

37. (1.) Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building and every platform, balcony, or other structure or part thereof let or used, or intended to be let or used, for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

The section applies to permanent as well as to temporary structures let or used for the accommodation of persons witnessing the show, &c. It will apply apparently to stands on race-courses.

It seems to be implied that a previous expression of satisfaction by the surveyor is not necessary, but it will be prudent in every case to obtain it.

(2.) Any person who uses or allows to be used, in contravention of this section, any roof of a building, platform, balcony, or structure not so safely constructed or secured, or who neglects to comply with the provisions of this section in respect thereof, shall be liable to a penalty not exceeding fifty pounds.

It does not appear what are "the provisions of this section in respect thereof." This clause seems to be unnecessary, as the mere user of a roof, &c., which is not safely constructed or secured to the satisfaction of the surveyor, renders the person using it liable to the penalty.

As to the recovery of the penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7.

Bye-laws for
prevention of
danger from
whirligigs,
shooting
galleries, &c.

38. An urban authority may make bye-laws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of firearms in shooting ranges and galleries.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

As to the making, &c., of these bye-laws, see section 9, *ante*, p. 564.

The bye-laws as to buildings will not apply to erections of the kind mentioned in the section. See *Hall v. Smallpiece*, 59 L. J. M. C. 97; 54 J. P. 710.

Refuges, &c.,
in streets.(a)

39. An urban authority may from time to time place, maintain, alter, and remove in any street, (b) being a highway repairable by the inhabitants at large, (c) such raised paving or places of refuge, with such pillars, rails, or other fences, either permanent or temporary, as they may think fit, for the purpose of protecting passengers and traffic, either along the street or on the footways, from injury, danger or annoyance, or for the purpose of making the crossing of any street less dangerous to passengers. (d)

(a) This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

(b) See the definition of "street," *ante*, p. 12.

(c) As to the meaning of these words, see the note to section 27 (1), *ante*, p. 581.

Note to
Section 39.

(d) It does not appear that there is any power to erect refuges in streets apart from this provision. Section 149 of the Public Health Act, 1875, *ante*, p. 169, enables an urban authority to place and keep in repair fences and posts for the safety of foot-passengers; but that section does not contemplate the appropriation of part of the street for a refuge.

40. (1.) An urban authority may from time to time provide, maintain, and remove in or near any street in their district suitable erections for the use, convenience, and shelter of drivers of hackney carriages, and such other persons as the urban authority may permit to use the same. Cabmen's
shelters.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

For the definition of a "street," see *ante*, p. 12.

The provisions of the section are quite new. Except under the power hereby conferred, a cabmen's shelter placed in a highway would be a nuisance, as being an obstruction of the public way.

For the definition of a "hackney carriage," see 10 & 11 Vict. c. 89, s. 38; 52 & 53 Vict. c. 14, s. 4; *Hickman v. Birch*, 24 Q. B. D. 172; 59 L. J. M. C. 22; 62 L. T. (N.S.) 113; 54 J. P. 406; 6 T. L. R. 104.

(2.) The urban authority may from time to time make regulations for prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make bye-laws for regulating the conduct of persons using the same.

The regulations of the urban authority are made under the Public Health Act, 1875, s. 188, *ante*, p. 259; they require no confirmation.

As to the making, &c., of bye-laws, see section 9, *ante*, p. 564.

41. Where this part of this Act is adopted, section one hundred and fifty-two of the Public Health Act, 1875, shall be repealed, and the following provisions shall be substituted in lieu thereof:— Adoption
of private
streets.

(1.) Whenever all or any of the works mentioned in section one hundred and fifty of the Public Health Act, 1875, have been executed in a street or part of a street under that section by an urban authority, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may, by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

In districts where the Private Street Works Act, 1892, has been adopted the section will not be in force. See sections 19 and 25 of that Act, *post*, pp. 689, 691.

See section 152 of the Public Health Act, 1875, *ante*, p. 198.

In the case of *Attorney-General v. Bidder*, 47 J. P. 263, it was held that section 152 was not a complement to section 150; that in order that an urban authority might declare a street not repairable by the inhabitants at large to be a highway, so that it may become so repairable, it was necessary that all the works specified in section 152 should, at the time of declaration, have been executed upon the street to the satisfaction of the urban authority; that the urban authority had not under section 152 any discretion as to which of the works therein mentioned they should require to be executed; that their discretion was limited to their being satisfied with the efficiency of each description of work when done; *semble*, that kerbing a road

**Note to
Section 41.**

does not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and *semble*, that wooden paving does not come within the meaning of any of the requirements of this section. See now, as to this last *dictum*, the provisions of section 11 (2), *ante*, p. 565.

The effect of the decision above mentioned has been practically to disable an urban authority to adopt or take over any street, and the provision in the text is intended to obviate the difficulty. If this part of the Act is adopted, and any of the works mentioned in section 150 (*i.e.*, sewerage, levelling, paving, metalling, flagging, channelling, making good, and lighting) have been done by the urban authority under that section, they may declare the street a highway, though some of these works may not have been done. See also the provisions of the Private Street Works Act, 1892, *post*.

- (2.) Provided that no such street shall become a highway so repairable if within one month after such notice has been put up the owner or the majority in number or value of owners of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint owners shall be reckoned as one owner.

This sub-section corresponds with the concluding paragraph of section 152 of the Public Health Act, 1875, with the substitution of the term *owners* for *proprietors*. It is not quite clear whether the owners above referred to are the owners of the soil of the street, or the owners of property fronting the street. The latter is probably the correct interpretation.

**Statues and
monuments.**

42. Any urban authority may from time to time authorise the erection in any street or public place within their district of any statue or monument and may maintain the same, and any statue or monument erected within their district before the adoption of this part of this Act, and may remove any statue or monument the erection of which has been authorised by them.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

Hitherto it has been more than doubtful whether any statue or monument could lawfully be set up in a public highway. The urban authority are surveyors of highways under the Public Health Act, 1875, ss. 144, 145, and the public highways are vested in them under section 149, but neither of these sections empowered them to put any permanent structure in a highway, thereby obstructing the public right of passage. In *Hildreth v. Adamson*, 8 C. B. (N.S.) 587; 30 L. J. M. C. 204; 2 L. T. (N.S.) 359; 25 J. P. 645, the question was raised, but not decided, whether a public fountain might lawfully be erected in a highway. It will be observed that a fountain is not mentioned in the text.

**Trees in
roads.**

43. Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

Apart from the provisions of this section an urban authority have no power to erect trees in a public highway. In 1886 the corporation of Lewes were convicted on indictment at the Sussex Assizes of causing a nuisance to the highway by planting trees therein. See the "Times" of the 9th March, 1886. Even now under the above provision the power to plant trees is not absolute; regard must be had to the public right of passage, and to the comfort and convenience of owners and occupiers. If these matters are not duly regarded it is probable that an indictment would lie as formerly.

The adjacent owner may, if the branches overhang his land, cut them off, without notice to the urban authority, so far as they overhang his land, provided he does not go off his own land to do so. *Lemmon v. Webb* [1895], A. C. 1; 64 L. J. Ch. 205; 71 L. T. (N.S.) 647; 59 J. P. 564.

Note to
Section 43.

Parks and
pleasure
grounds.

44. (1.) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them, or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public, may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

A public park may be provided by an urban authority under section 164 of the Public Health Act, 1875, *ante*, p. 226.

(2.) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make bye-laws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.

This provision applies only when there is a lake or ornamental water in a public park or pleasure ground provided by the urban authority. They cannot provide boats, &c., for use on the sea or on a river, though they may license the boat owners and boatmen of boats and vessels under section 172 of the Public Health Act, 1875, *ante*, p. 236. Boats provided under this section need not apparently be registered under the Merchant Shipping Act. See *Southport (Mayor, &c., of) v. Morris* [1893], 1 Q. B. 359; 62 L. J. M. C. 47; 57 J. P. 84.

As to the making, &c., of the bye-laws, see section 9, *ante*, p. 564.

45. The powers of an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, to contribute to the support of public walks or pleasure grounds, shall include a power to contribute towards the cost of the laying out, planting, or improvement of any lands provided by any person which have been permanently set apart as public walks or pleasure grounds, and which, whether in the district of the urban authority or not, are so situated as to be conveniently used by the inhabitants of the district, and shall also include a power to contribute towards the purchase by any person of lands so situate and to be so set apart as aforesaid.

Extension of
38 & 39 Vict.
c. 55, s. 164.

This section cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

See section 164 of the Public Health Act, 1875, *ante*, p. 226.

**Note to
Section 45.**

The increased powers conferred by the text enable an urban authority not only to contribute to the support of public walks or pleasure grounds provided by other bodies or persons, but give power to contribute to the laying out, planting, or improvement of lands so provided, whether these lands are in the district or not, if they are conveniently situate for the use of the inhabitants of their district, and a power to contribute towards the purchase of such lands by other persons or bodies.

The word "person" includes a body corporate (Public Health Act, 1875, s. 4, *ante*, p. 5), and the text, therefore, enables an urban authority to contribute towards the purchase, laying out, and support of public walks, &c., provided by an adjoining sanitary authority.

Extension of
38 & 39 Vict.
c. 55, s. 165.

46. Section one hundred and sixty-five of the Public Health Act, 1875, shall be extended so as to enable any urban authority to pay the reasonable cost of the repairing, maintaining, winding up, and lighting any public clock within their district, although the same be not vested in them.

Section 165 of the Public Health Act, 1875, *ante*, p. 228, enables an urban authority to provide public clocks, and to cause them to be lighted at night. The text enables them to maintain public clocks, such as those on churches, &c., though they did not provide them, and though such clocks are not their property.

Restriction
on throwing
cinders, &c.,
into streams.

47. (1.) It shall not be lawful for any person to throw or place, or suffer to be thrown or placed, into or in any river, stream, or water-course within any district in which this part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

This section, when adopted, will be an extension of the provisions of the Rivers Pollution Prevention Act, 1876, under which the throwing of cinders, &c., into a stream so as to interfere with its due flow, or to pollute it, is an offence. See that Act in the Appendix, *post*. The text will afford a more direct remedy by summary proceedings as compared with proceedings in the county court under the Act of 1876. As to the powers of county councils with respect to the pollution of streams, see the 52 & 53 Vict. c. 41, s. 14, *ante*, p. 499.

(2.) Every person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every such offence.

As to the recovery of this penalty, see section 6. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 563.

Extension of
38 & 39 Vict.
c. 55, s. 306.

48. So much of section three hundred and six of the Public Health Act, 1875, as imposes penalties on persons who destroy, pull down, injure, or deface any board on which any bye-law, notice, or other matter is inscribed, shall apply to persons who destroy, pull down, injure, or deface any advertisement, placard, bill, or notice put up by or under the direction of a local authority.

This section may be adopted by a rural authority. See section 50, *post*, p. 593.

Section 306 of the Public Health Act, 1875, *ante*, p. 401, provided that any person who destroys, pulls down, injures, or defaces any board on which any bye-law, notice, or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board, or of the local authority, be liable for every such offence to a penalty not exceeding 5*l*. The text extends this section to bills, posters, &c., wherever posted, and whether the board on which they may be placed is destroyed, &c., or not.

49. The Local Government Board may by order on the application of any rural authority declare any expenses incurred by such authority to be special expenses within the meaning of sections two hundred and twenty-nine and two hundred and thirty of the Public Health Act, 1875. Section 49.
Power to determine expenses of rural authorities to be special expenses.

This section may be adopted by a rural authority (see the next section); indeed, it is not applicable to an urban authority. Section 229 of the Public Health Act, 1875, *ante*, p. 308, provides that general expenses shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection (see also 53 & 54 Vict. c. 34, s. 20, *ante*, p. 558), the providing conveyance for infected persons, and all other expenses not determined by the Act or by order of the Local Government Board to be special expenses. Special expenses are the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under the Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses. Section 230 provides for the raising of general and special expenses.

The text appears to enable the Local Government Board to declare expenses to be special expenses though they are general expenses by virtue of a statutory provision such as that contained in section 229 unless so declared. Thus the expenses of disinfection may be declared to be special expenses.

50. The following provisions of this part of this Act shall be applicable in rural sanitary districts, namely,— Application of part of Act in rural districts.

Section sixteen, relating to injurious matter being passed into sewers.

Section seventeen, relating to the turning of chemical refuse, steam, &c., into sewers.

Section eighteen, relating to local authorities making communication with drains, &c.

Section nineteen, relating to the extension of section forty-one of the Public Health Act, 1875.

Section twenty-one, relating to sanitary conveniences used in common.

So much of section twenty-three, relating to the extension of section one hundred and fifty-seven of the Public Health Act, 1875, as applies to rural authorities.

Section twenty-five, relating to the penalty for erecting buildings on ground filled up with offensive matter.

Sub-section (2) of section twenty-six, relating to the power to make bye-laws for certain sanitary purposes.

Section twenty-eight, relating to the extension of sections one hundred and sixteen to one hundred and nineteen inclusive of the Public Health Act, 1875.

Section thirty-two, relating to the extension of section eighty-four of the Public Health Act, 1875.

Section thirty-three, relating to the use of buildings described in deposited plans otherwise than dwelling-houses.

Section forty-seven, relating to the restriction on throwing cinders, &c., into streams.

Section 50. Section forty-eight, relating to the extension of section three hundred and six of the Public Health Act, 1875.

Section forty-nine, relating to the powers of the Local Government Board to determine expenses of rural authorities to be special expenses.

The application of this section has been noted in every case under the several sections above referred to.

The rural authority may obtain urban powers under section 5 enabling them to adopt other sections in their district.

PART IV.

MUSIC AND DANCING.(a)

Music and
dancing
licenses.

51. For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect (namely) : (b)—

(a) A rural authority cannot adopt this part of the Act except in pursuance of urban powers. See section 3 (2), and section 5, *ante*, pp. 560, 562. In many towns local Acts in *pari materia* are in force.

When this part of the Act is adopted the resolution of the local authority must be sent to the Local Government Board and to a Secretary of State. See section 3 (4), *ante*, p. 561.

(b) It may be useful here to refer to the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2, which provides that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof (but now repealed by the Music and Dancing Licenses (Middlesex) Act, 1894 (57 & 58 Vict. c. 15), so far as relates to the administrative county of Middlesex), without a license had for that purpose from the preceding Michaelmas quarter sessions of the peace (now the London County Council, 51 & 52 Vict. c. 41, s. 3) shall be deemed a disorderly house or place. The following cases have been decided with reference to this Act :—

The statute extends to houses kept for the purpose of private dancing, not to public places only. *Clarke v. Searle*, 1 Esp. 25.

A room in which musical performances are regularly exhibited, though it is not kept or used solely for that purpose, is within the statute, and requires a license. *Bellis v. Beale*, 2 Esp. 592.

A room kept by a dancing master for the instruction of his scholars and subscribers, and to which persons are not indiscriminately admitted, is not within the statute. *Bellis v. Burghall*, 2 Esp. 722.

To subject a party to the penalties of the statute for keeping a house for illegal dancing and music, it is not necessary that the party who kept the house should take money for admission. *Archer v. Willingrice*, 4 Esp. 186.

A temporary use of a room in a public-house for the purpose of dancing on a particular festival or occasion does not subject the owner to the penalty of the statute. *Shutt v. Lewis*, 5 Esp. 128.

The statute extends to licensed taverns and hotels, and it is no defence that the company frequenting the performance was respectable or that the admission money was not received for the benefit of the keeper of the house. *Green v. Botheroyd*, 3 C. & P. 471.

A room used for public music or dancing is within the statute, although it is not exclusively used for those purposes, and although no money is taken for admission ; but the mere accidental or occasional use of a room for either or both of these purposes will not be within the statute. *Gregory v. Tuffs*, 6 C. & P. 271 ; 1 M. & Rob. 313 ; *Gregory v. Tavernor*, 6 C. & P. 281.

In an action to recover the penalty for keeping an unlicensed house for public dancing, it appeared that music, dancing, &c., had occasionally taken place at the defendant's house (a public house), and that no money was taken by him for admission, but the rooms were let to persons who sold tickets and received money

for admission at the door ; but there was no direct evidence that the defendant knew of this practice :—Held, that there was evidence to go to the jury of a keeping of the house by the defendant for the purposes mentioned in the statute, and that the judge was wrong in directing a non-suit. *Marks v. Benjamin*, 5 M. & W. 565 ; 3 Jur. 1194.

No action can be maintained on an agreement to exhibit entertainment for gain in a place where, by the above statute, a license cannot be obtained. *Levy v. Yates*, 3 A. & E. 129 ; 3 N. & P. 249 ; 1 W. W. & H. 219.

A room within the limits of the Act kept for public dancing or music without a license is a disorderly house under 25 Geo. 2, c. 36, s. 2, though no disorderly or improper conduct is allowed in the said room. The preamble does not confine this section to "places of entertainment for the lower sort of people," where robberies are likely to ensue. The defendant when indicted for keeping such house must prove his license. *Reg. v. Wolfe and Others*, 13 J. P. 428.

A. kept a room which was used as a supper-room and place of general refreshment, there being at the end of it a raised platform, on which stood a piano, and where songs were constantly sung. Programmes of the performance were laid about in different parts of the room. The company was respectable, and no money was paid for admission, nor any extra charge made for the articles consumed there. An action having been brought for a penalty under 25 Geo. 2, c. 36, the judge directed the jury to say whether the room was used for the purpose of supplying refreshments in the manner of an hotel, the music and singing being incidental merely, or whether it was used principally for musical performances ; and ultimately he directed them to consider whether the room was used for both purposes, in which latter case the informer would be entitled to the verdict. The jury found that the room was used for the purpose of an hotel, and found a verdict for A. :—Held, that although the verdict might be against the evidence, there was no misdirection. *Hall v. Green*, 2 C. L. R. 427 ; 23 L. J. M. C. 15 ; 9 Exch. 247.

Under similar words in a local Act it was held that to bring a case within the statute the music and dancing must be an essential part of the entertainment, and not merely accessories to it. It is not necessary that the dancing should be by the public. *Quaglieni v. Matthews*, 6 B. & S. 474 ; 34 L. J. M. C. 116 ; 11 Jur. (N.S.) 436 ; 29 J. P. 439.

The appellant was convicted under the Theatres Act, 1843 (6 & 7 Vict. c. 68), for keeping a place for the public performance of stage plays, and for causing to be acted there certain parts in a stage play without the license required by that Act. It was proved that the appellant was the occupier of a hall, which, though licensed for public dancing and music, was not licensed as a theatre, and that one end of that hall was fitted up with a stage, where, with lights and scenery and the other accessories of a stage, the appellant caused to be presented for the amusement of the public, for which they paid, a performance sustained by living persons with a dialogue between them and a regular plot, which was distinguished only from an ordinary stage play by all the actors except two (the dialogue between whom was wholly subordinate to the plot of the piece) being not bodily on the stage, but represented merely by a reflection of their figures on a mirror at the back of the stage, so ingeniously contrived that to the spectators the appearance was that of persons actually upon the stage :—Held, that there had been a violation of the statute, and that the conviction was right. *Day v. Simpson*, 18 C. B. (N.S.) 680 ; 34 L. J. M. C. 49 ; 12 L. T. (N.S.) 386 ; 13 W. R. 748 ; 11 Jur. (N.S.) 487.

Where a room above the bar of a public-house was used for music and dancing, the keeper of the house was held liable not for having a license, though the persons using the room paid nothing to him for it. *Frailing v. Messenger*, 16 L. T. (N.S.) 497 ; 31 J. P. 423.

A common informer having recovered in an action from the defendant the penalty of 100*l.* for keeping a house without a license, it was held that only one penalty was recoverable, and that a second action by another common informer to recover a like penalty was not maintainable. *Garrett v. Messenger*, L. R. 2 C. P. 583 ; 36 L. J. C. P. 437 ; 31 J. P. 423 ; 16 L. T. (N.S.) 414 ; 15 W. R. 164 ; 10 Cox C. C. 498. But see also *Girdlestone v. Brighton Aquarium Company*, 3 Ex. D. 137 ; 38 L. T. (N.S.) 358 ; 26 W. R. 575 ; 42 J. P. 487 ; affirmed in C. A., 4 Ex. D. 107 ; 48 L. J. Ex. 373 ; 40 L. T. (N.S.) 473 ; 27 W. R. 523 ; 43 J. P. 428 ; *Barrett v. Johnson*, 2 Jones Ir. Ex. Rep. 197.

A performance in a place duly registered as a place of public worship, in which no music but sacred music is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive and contain nothing

**Note to
Section 51.**

hostile to religion, is not an entertainment within the meaning of the Sunday Observance Act, 1780 (21 Geo. 3, c. 49). Therefore, where services were held on a Sunday evening in a registered place, and at such services sacred music was performed by amateur and professional performers, and addresses given, and a small sum charged for reserved seats, it was held that an action could not be maintained against the president of such association under the above Act. *Baxter v. Langley*, L. R. 4 C. P. 21; 38 L. J. M. C. 1; 19 L. T. (N.S.) 321; 17 W. R. 254; 32 J. P. 805.

Under the statute the justices have a discretion to grant a license, for music only; and the keeper of a house with a music license only is liable to a penalty for keeping a house without a license if he permits public dancing in the house. *Brown v. Nugent*, L. R. 6 Q. B. 693; 7 Q. B. 588; 40 L. J. M. C. 217; 41 L. J. M. C. 166; 26 L. T. (N.S.) 880; 20 W. R. 89; 36 J. P. 22.

C. was lessee of a theatre duly licensed under 6 & 7 Vict. c. 68; he also held a justices' license under 25 Geo. 2, c. 36, and on Ash Wednesday he gave a concert in the theatre, to which the public were admitted for money. Both his licenses contained a regulation that no entertainment should be given on Ash Wednesday. It was held that he did not commit an offence against the 25 Geo. 2, c. 36, as the concert was not a public entertainment *ejusdem generis* with public dancing, and, at all events, the room was not habitually kept for such entertainment. *Syers v. Conquest*, 28 L. T. (N.S.) 402; 21 W. R. 524; 37 J. P. 342.

Under similar provisions in a local Act it was held that the justices had an implied right to grant the license for one year, though no period was mentioned in the statute, and that they were entitled to refuse to renew it. *Hoffman v. Bond*, 32 L. T. (N.S.) 775; 40 J. P. 5.

The defendant kept a skating rink, which was enclosed by a wall, and was partly roofed with canvas and partly open to the air. It was open for skating in the daytime and in the evening. In the daytime there was no music. In the evening a band played operatic and dance music while the skaters skated. The defendant had no license. It was held that the defendant might be properly convicted of keeping a place of public entertainment of a like kind to music and dancing without a license, and, *semble*, that he might also be convicted of keeping a place for public music without a license. *Reg. v. Tucker*, 2 Q. B. D. 417; 46 L. J. M. C. 197; 36 L. T. (N.S.) 478; 25 W. R. 697; 41 J. P. 294; 13 Cox C. C. 1600.

1. After the expiration of six months from the adoption of this part of this Act, a house, room, garden, or other place, whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind (a) without a license for the purpose or purposes (b) for which the same respectively is to be used first obtained from the licensing justices of the licensing district (c) in which the house, room, garden, or place is situate, and for the registration thereof a fee of five shillings shall be paid by the person applying therefor : (d)

(a) See the cases decided with reference to these words on the statute 25 Geo. 2, c. 36, cited in the preceding note.

(b) The justices may grant a license for one purpose only. See *Brown v. Nugent*, *supra*.

(c) For the definition of "licensing justices," and "licensing district," see subsection (13).

(d) This fee is presumably payable to the clerk of the justices.

2. Such justices may, under the hands of a majority of them assembled at their general annual licensing meeting or at any adjournment thereof, or at any special session convened with fourteen days' previous notice, grant licenses to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and

subject to such restrictions, as they by the respective licenses determine, and every license shall be in force for one year, or for such shorter period as the justices on the grant of the license shall determine, unless the same shall have been previously revoked as hereinafter provided :

As already stated, the justices are the licensing justices of the division or borough. See sub-section (13), *infra*.

The general annual licensing meeting is the meeting at which new licenses and the renewal of licenses for the sale of intoxicating liquor are granted. It is held in the counties of Middlesex and Surrey in the first ten days of March, and elsewhere on some day between the 20th August and the 14th September in each year. The justices are required to continue the meeting by adjournment to such day or days, and to such place or places within the division, as they may deem most convenient and sufficient for enabling persons to apply for licenses ; but every such adjourned meeting must be held in Middlesex and Surrey within the month of March, and elsewhere before the end of September (9 Geo. 4, c. 61, ss. 1—3). For further information as to the general annual licensing meeting, the reader is referred to "Paterson's Licensing Acts," 10th edition, p. 212.

The special session above mentioned is not a special session under 9 Geo. 4, c. 61, s. 4, for the transfer of liquor licenses. It is an ordinary special session of the justices of the division convened in the usual way. As to the notice of the intention to apply for a license, see sub-section (4), *infra*.

A license may be granted for music only, or for dancing only, or as the case may be. Applications for these licenses must be determined judicially. See *Reg. v. London County Council* [1892], 1 Q. B. 190 ; 61 L. J. M. C. 75 ; 66 L. T. (N.S.) 168 ; 40 W. R. 285 ; 56 J. P. 8 ; *Royal Aquarium Society v. Parkinson* [1892], 1 Q. B. 431 ; 61 L. J. Q. B. 409 ; 66 L. T. (N.S.) 513 ; 40 W. R. 450 ; 56 J. P. 404.

As to the duration of the license, see *Hoffmann v. Bond*, *ante*, p. 596.

The terms, conditions, and restrictions annexed to a license may be conveniently indorsed on the license, and may be printed or written.

As to the revocation of a license, see sub-section (9), *infra*.

3. Such justices may from time to time at any such special session aforesaid transfer any such license to such person as they think fit :

As to the special session, see the note to the preceding sub-section.

As to the notice of intention to transfer, see the next sub-section.

A transfer will be necessary upon each change of occupier, as the license is a personal one, as well as in respect of the particular premises.

4. Each person shall in each case give fourteen days' notice to the clerk of the licensing justices and to the chief officer of police of the police district in which the house, room, garden, or place is situated, of his intention to apply for any such license or for the transfer of any such license :

As to the clerk of the licensing justices and the chief officer of police, see sub-section (13), *infra*.

5. Any house, room, garden, or place kept or used for any of the purposes aforesaid without such license first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes last aforesaid :

Though the house is to be deemed a disorderly house, it does not appear that the occupier will be liable to indictment for keeping a disorderly house as a penalty is here provided which will be recoverable as provided by section 6, with appeal to

Note to Section 51. quarter sessions under section 7. In this respect the present enactment differs from the 25 Geo. 2, c. 36, s. 2, under which the occupier is liable to a penalty, and to be otherwise punishable as the law directs in cases of disorderly houses.

6. There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters in the words following: "Licensed in pursuance of Act of Parliament for _____," with the addition of words showing the purpose or purposes for which the same is licensed:

The fixing and keeping up of this inscription must be inserted in and made a condition of every license (sub-section (8)), and a penalty for breach of the condition is imposed by sub-section (9), *infra*.

7. Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes, except on the days and between the hours stated in the license:

As to a condition not to open on Ash Wednesday, *Syers v. Conquest*, *ante*, p. 596. And as to Sundays, see the Sunday Observance Act, 1780 (21 Geo. 3, c. 49), and *Reid v. Wilson* [1895], 1 Q. B. 315; 64 L. J. M. C. 60; 71 L. T. (N.S.) 739; 43 W. R. 161; 59 J. P. 516.

8. The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such license:

As to the penalties for breach of this condition, see the next sub-section.

9. In case of any breach or disregard of any of the terms or conditions upon or subject to which the license was granted, the holder thereof shall be liable to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding five pounds, and such license shall be liable to be revoked by the order of a court of summary jurisdiction:

As to the recovery of this penalty, see section 6. For the definition of a daily penalty, see section 11 (3), *ante* p. 565. Appeal against conviction lies to quarter sessions under section 7, *ante*, p. 563.

10. No notice need be given under sub-section four of this section when the application is for a renewal of any existing license held by the applicant for the same premises:

In other words, notice under sub-section (4) is necessary only on an application for a new license or for a transfer. Notice is not necessary on application for a mere renewal.

11. The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same a license to keep or use any house, room, garden, or place for any purpose within the meaning of this section, for any period not exceeding fourteen days, which they shall specify in such license, notwithstanding that no notices shall have been given under sub-section four of this section:

No notice is necessary before such an application is made. The application is to petty sessions for the grant of a license for a period not exceeding fourteen days.

12. This section shall not apply within twenty miles of the cities of Section 51. London or Westminster :

The reason of this provision is that within this area the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), or the Music and Dancing Licenses (Middlesex) Act, 1894 (57 & 58 Vict. c. 15), already mentioned are in force.

13. In this section the expressions "licensing justice," "licensing district," and "clerk of the licensing justices" have respectively the same meanings as in the Licensing Acts, 1872—1874 ; the expression "police district" means any area for which a separate police force is maintained ; and the expression "chief officer of police" means the chief constable, head constable, or other officer, by whatever name called, having the chief command of such separate police force :

The Licensing Act, 1872, defines a licensing district to be the area for which a general annual licensing meeting is held pursuant to 9 Geo. 4, c. 61, and licensing justices to mean the justices having jurisdiction in respect of the grant of new licenses in a licensing district. The expression "clerk of the licensing justices" means, where the licensing district is a county or petty sessional division of a county, the clerk of the petty sessions for such division ; and where the licensing district is a county of a city, county of a town, city, municipal borough, or town corporate, or other place not a county or a petty sessional division of a county, means the clerk to the justices of such county of a city, &c., or other person performing analogous duties to such clerk.

A police district may be a county or a borough which has a separate police force.

PART V.

STOCK.(a)

52. (1.) Where any authority, whether a municipal corporation, ^{Issue of stock.} local board, or improvement commissioners, which is an urban authority, have, for the time being, either in their capacity as urban authority or in any other capacity, any power to borrow money, they may, with the consent of the Local Government Board, exercise such power by the creation of stock to be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations as the Local Government Board may from time to time prescribe.

(a) This part of the Act cannot be adopted by a rural authority except in pursuance of urban powers. See sections 5, 50.

Notice of the resolution adopting this part of the Act must be sent to the Local Government Board. See section 3 (5), *ante*, p. 562.

(2.) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the ^{38 & 39 Vict.} Acts amending the same, and of any Act relating to stock issued by the ^{c. 89.}

Section 52 Metropolitan Board of Works, the County Council of London, or by the corporation of any municipal borough.

The Local Loans Act, 1875, is the 38 & 39 Vict. c. 83, *post*, and the only amending Act is 48 & 49 Vict. c. 30, *post*. Under these Acts loans must be raised by (1) terminable annuities, (2) debentures, or (3) debenture stock. Where this part of the Act is adopted, local stock may be created with the consent of the Local Government Board, and subject to their regulations.

(3.) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with, the same shall be of no effect, without prejudice, nevertheless, to the making of further regulations.

(4.) If no such resolution is passed, it shall be lawful for Her Majesty by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made, and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act.

The regulations at present in force were confirmed by Order in Council dated the 26th September, 1891. See St. R. & O., 1891, p. 609.

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 VICT. CAP. 70.)

An Act to consolidate and amend the Acts relating to Artizans and Labourers' Dwellings and the Housing of the Working Classes.
[18th August, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title of Act.

1. This Act may be cited as the Housing of the Working Classes Act, 1890.

This Act repeals and consolidates with amendments the Acts enumerated in the Seventh Schedule, *post*.

PART I.(a)

UNHEALTHY AREAS.

Definitions.

2. In this part of this Act—

The expression “ this part of this Act ” includes any confirming Act, and

The expression “ the Acts relating to nuisances ” means—

As respects the county of London and city of London, the

Nuisances Removal Acts^(b) as defined by the Sanitary Act, **Section 2.**
1866, and any Act amending these Acts ; and

As respects any urban sanitary district in England, the Public Health Acts ;^(c) 29 & 30 Vict.
c. 90, s. 14.

and in the case of any of the above-mentioned areas, includes any local Act which contains any provisions with respect to nuisances in that area.

(a) This part of the Act consolidates with amendments the Artizans and Labourers' Dwellings Improvement Acts (38 & 39 Vict. c. 36 ; 42 & 43 Vict. c. 63 ; and 45 & 46 Vict. c. 54, Part I., as amended by 48 & 49 Vict. c. 72).

(b) These Acts are now repealed and consolidated by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and that Act must be read as substituted for those referred to in the text.

(c) A list of the Public Health Acts will be found in the 51 & 52 Vict. c. 52, s. 1, *ante*, p. 531, and in the Short Titles Act, 1892 (55 & 56 Vict. c. 10).

This part of the Act does not apply to rural sanitary districts. See the next section.

3. This part of this Act shall not apply to rural sanitary districts.

Application
of Part I. of
Act.

Scheme by Local Authority.

4. Where an official representation as hereinafter mentioned^(a) is made to the local authority^(b) that within a certain area in the district of such authority, either—

Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

(a.) Any houses, courts, or alleys are unfit for human habitation, or

(b.) The narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or groups of houses within such area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings ;^(c)

and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution^(d) to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.^(e)

Provided always, that any number of such areas may be included in one improvement scheme.

This section replaces 38 & 39 Vict. c. 36, s. 3.

(a) As to the official representation, see the next section.

(b) For the definition of "local authority," see section 92 and Schedule I., *post*. In urban districts the urban sanitary authority are the local authority.

(c) This clause differs from that which was contained in 38 & 39 Vict. c. 36, s. 3, the words of which were "that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area, and that such prevalence may reasonably be attributed to the closeness, narrowness," &c. It is not now necessary that there should have been any

**Note to
Section 4.**

diseases actually prevalent in the area if the narrowness, &c., of the streets and houses are dangerous to the health of the inhabitants of the area or of adjoining buildings.

(d) A member of the local authority cannot vote upon this resolution if it relates to any dwelling-house, building, or land, in which he is beneficially interested. See section 88, *post*, p. 654.

(e) As to the requisites of the scheme, see section 6, *infra*. If the representation in London relates to less than ten houses, it must be dealt with under Part II.

Official representation, by whom to be made.

5. (1.) An official representation for the purposes of this part of this Act shall mean a representation made (a) to the local authority by the medical officer of health of that authority, and in London made either by such officer or by any medical officer of health in London. (b)

This section is a re-enactment of 38 & 39 Vict. c. 36, s. 4.

(a) The representation must be in writing. See section 79 (2), *post*, p. 652.

(b) The representation may be made by any person authorised to act temporarily as medical officer of health (section 79 (1), *post*). As to a temporary appointment in case of the illness or absence of a medical officer, see section 26, *post*, p. 616. As to the appointment of a medical officer of health for the purposes of the Act by the London County Council, see section 76, *post*, p. 651. As to the appointment of medical officers of health in London, see the Public Health (London) Act, 1891.

(2.) A medical officer of health shall make such representation whenever he sees cause to make the same ; and if two or more justices of the peace acting within the district for which he acts as medical officer of health, or twelve or more persons liable to be rated to the local rate, (a) complain to him of the unhealthiness of any area within such district, it shall be the duty of the medical officer of health forthwith to inspect such area, and to make an official representation (b) stating the facts of the case, and whether in his opinion the said area or any part thereof is an unhealthy area or is not an unhealthy area. (c)

(a) The local rate is defined in section 92 and Schedule I., *post*.

(b) See note (a) to the preceding sub-section.

(c) Where the medical officer is required by two justices or twelve ratepayers to make a representation, he must do so even if the area is not, in his opinion, an unhealthy area. As to the right of the ratepayers to appeal to the confirming authority if the medical officer makes default, or if he reports that the area is not unhealthy, see section 16, *post*, p. 610.

Requisites of improvement scheme of local authority.

6. (1.) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and

(a) May exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes ; and

(b) May provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health ; and

(c) Shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act ; (a) and

(d.) Shall provide for proper sanitary arrangements.

The whole of this section is taken without change from 38 & 39 Vict. c. 36, s. 5.

(a) The provisions of this Act here referred to are contained in section 11, *post*, p. 606.

(2.) The scheme shall distinguish the lands proposed to be taken Section 6.
compulsorily.

From this it is to be inferred that the scheme must state the property which must be acquired for purposes of the scheme, and distinguish how much of such property is to be acquired compulsorily.

(3.) The scheme may also provide for the scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

The owner of the first estate of freehold may be a tenant for life or a person having a freehold estate less than the fee simple.

Confirmation of Scheme.

7.(a) Upon the completion of an improvement scheme the local authority shall— Publication of notices.

(a.) Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the district of the local authority, an advertisement(b) stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours ; and

(b.) During the month next following the month in which such advertisement is published serve a notice(c) on every owner or reputed owner,(d) lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee, or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands. Service of notices.

(c.) Such notice shall be served—

(i.) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises ;(e)
or

(ii.) By leaving the same at the usual or last-known place of abode of such person as aforesaid ; or

(iii.) By post addressed to the usual or last-known place of abode of such person.

(d.) One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a

Section 7.

notice served on the occupier or on all the occupiers of any such house.

(a) The whole of this section is taken without alteration from 38 & 39 Vict. c. 36, s. 6.

(b) As to the form of advertisement, see section 27, *post*, p. 617.

(c) As to the power of the confirming authority to dispense with notices, see section 28, *post*, p. 617.

(d) There is no definition of an owner in this part of the Act.

(e) The notice can only be left on the premises if the person or his agent cannot be found, except, of course, when the premises are the last or usual place of abode of such person.

Making and confirmation of provisional order.

8. (1.) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and the service of notices, (a) the local authority shall present a petition, if it relates to any part of the county or city of London, (b) to a Secretary of State, and if it relates to any other place, to the Local Government Board, praying that an order may be made confirming such scheme.

The whole of this section is taken without alteration from 38 & 39 Vict. c. 36, s. 6. (a) As to the power of the confirming authority to dispense with the advertisement and notices, see section 28, *post*, p. 617.

(b) The county of London is the administrative county of London, as created by the Local Government Act, 1888, exclusive of the city of London.

(2.) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this part of this Act referred to as the confirming authority), may from time to time require.

As to the owners, &c., who have dissented, see section 7 (b), *ante*.

(3.) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, (a) the confirming authority think fit to proceed with the case, they shall direct a local inquiry (b) to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(a) As to the power of the confirming authority to dispense with the advertisements and notices, see section 28, *post*, p. 617.

(b) As to the holding of the local inquiry, see section 85, *post*, p. 653.

(4.) After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area comprised in the scheme and authorising such scheme to be carried into execution.

(5.) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, (a) and it shall be the duty of the

local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this part of this Act to be served, except tenants for a month or a less period than a month. (b) Section 8.

(a) Having regard to this limitation, it will obviously be the duty of the local authority to ascertain in the first instance all lands which it may be necessary to acquire compulsorily. See section 6, sub-section 2, *ante*, p. 603.

(b) The persons upon whom the notices are required to be served are the owners or reputed owners, lessees or reputed lessees, and occupiers. See section 7, *ante*, p. 603.

(6.) A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any Act confirming any provisional order made in pursuance of this part of this Act, with such modifications as may seem fit to Parliament, shall be a public General Act of Parliament, and is in this part of this Act referred to as the confirming Act.

(7.) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

The opposition to the scheme here referred to appears to be the opposition at the local inquiry held under sub-section 3. The amount allowed will be in the discretion of the confirming authority.

(8.) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

As to the expenses of the local authority, see sections 24, 25, *post*, p. 614.

As to the enforcing of an order of the confirming authority, for costs, &c., see the next sub-section.

(9.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

A rule of court is enforced in the same manner as a judgment. See 1 & 2 Vict. c. 110, s. 18. If it is an order for payment of money, it may be enforced like any other judgment against a local authority by *mandamus*.

Section 9.
Costs to be
awarded in
certain cases.

9. (1.) Where any Bill for confirming a provisional order authorising an improvement scheme is referred to a Committee of either House of Parliament upon the petition of any person opposing such Bill, the Committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the Bill as the Committee may think just.

This clause refers to the practice of the Local Government Board and other Departments of State when a petition is presented against a Bill introduced to enforce a provisional order. In such a case the Bill is treated as an opposed local or personal Bill, and referred in the usual way to a select committee, before whom the promoters and the opponents are heard. Where such a course is adopted with reference to a Bill confirming a provisional order under this Act, the committee are required to consider the circumstances of the opposition, and to award costs to the promoters or their opponents accordingly.

(2.) Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The 28 & 29 Vict. c. 27 (the Parliamentary Costs Act, 1865), is an Act which enables a parliamentary committee to award costs, and provides for the taxation of such costs.

(3.) The decision of the majority of the members of the Committee for the time being present and voting on any question under this section shall be deemed to be the decision of the Committee.

Inquiry on
refusal of
local authority
to make
an improve-
ment scheme.

10. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, the local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

As to the holding of the local inquiry, see section 85, *post*, p. 653.

The Act does not provide for the taking of any action by the confirming authority on receipt of the report.

Provision of Dwelling Accommodation for Working Classes displaced by Scheme.

Requisites of
improvement
scheme as to
accommoda-
tion of work-
ing classes.

11. (1.) Subject as hereinafter mentioned, every scheme comprising an area in the county or city of London shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area comprised therein, in suitable dwellings, which,

unless there are any special reasons to the contrary, shall be situate Section 11.
within the limits of the same area, or in the vicinity thereof.(a)

Provided that—

- (a.) Where it is proved to the satisfaction of the confirming authority(b) on an application to authorise a scheme that equally convenient accommodation can be provided for any persons of the working classes displaced by the scheme at some place other than within the area or the immediate vicinity of the area comprised in the scheme,(c) and that the required accommodation has been or is about to be forthwith provided, either by the local authority or by any other person or body of persons, the confirming authority may authorise such scheme, and the requirements of this section with respect to providing accommodation for persons of the working class shall be deemed to have been complied with to the extent to which accommodation is so provided ;(d) and
- (b.) Where the local authority apply for a dispensation under this section, and the officer conducting the local inquiry directed by the confirming authority(e) reports that it is expedient, having regard to the special circumstances of the locality and to the number of artisans and others belonging to the working class dwelling within the area, and being employed within a mile thereof, that a modification should be made, the confirming authority, without prejudice to any other powers conferred on it by this part of this Act, may in the Provisional Order authorising the scheme dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by the scheme to such extent as the confirming authority may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one-half of the persons so displaced.

This section re-enacts the corresponding provision of 38 & 39 Vict. c. 36, s. 5, as amended by 42 & 43 Vict. c. 63, s. 4, and 45 & 46 Vict. c. 54, s. 3.

(a) This sub-section applies only in the county or city of London. The general rule in that county and city is, that accommodation must be provided for at least as many persons of the working classes as are displaced, and such accommodation must be within the same area, or in the vicinity thereof, unless there are special reasons to the contrary.

(b) In the county and city of London the confirming authority is a Secretary of State. See section 8 (2), *ante*, p. 604.

(c) The accommodation here referred to need not be in the same area or the immediate vicinity, but having regard to the opening words of the section, it must be in the vicinity, *i.e.* within a reasonable distance from the area.

(d) If the accommodation thus provided in the vicinity is only sufficient for a portion of the persons displaced, the local authority must provide for the accommodation of the remainder within the area or the vicinity thereof.

(e) This refers to the local inquiry held under section 8 (3), *ante*, p. 604.

(2.) Where a scheme comprises an area situate elsewhere than in the county or city of London, it shall, if the confirming authority(a) so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), to provide for the accommodation of such number of those persons of the working classes displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area

Section 11. as the said authority on a report made by the officer conducting the local inquiry may require. (b)

(a) The confirming authority here referred to is the Local Government Board. See section 8 (2), *ante*, p. 604.

(b) The local inquiry is that held under section 8 (1), *ante*, p. 604.

In the country, outside the county of London, it will not be necessary for the scheme to provide accommodation for the working classes displaced, except to the extent required by the confirming authority on the report of their officer.

Execution of Scheme by Local Authority.

Duty of local authority to carry scheme when confirmed into execution.

12. (1.) When the confirming Act authorising any improvement scheme of a local authority under this part of this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable.

This section is a re-enactment of 38 & 39 Vict. c. 26, s. 9.

The provisions for the acquisition of land are contained in section 20, *post*, p. 611.

(2.) They may sell or let all or any part of the area comprised in the scheme to any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular, they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings, without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease.

The local authority may themselves clear the area, but they cannot build thereon without the approval of the confirming authority. See sub-section (3), *infra*. They may, however, let or sell to persons who will covenant to clear the site or part thereof, and to rebuild according to the requirements of the above sub-section.

(3.) The local authority may also engage with any body of trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

The Act does not contemplate the entire execution of the scheme by the local authority. They may clear the site and make streets, but they are, in general, to leave to third persons the work of rebuilding under conditions such as are mentioned in the preceding and the next sub-sections.

In the district of an urban authority the new streets will be repairable by them under section 149 of the Public Health Act, 1875, *ante*, p. 169.

(4.) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the

working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements. Section 12.

Such an appropriation for working classes' dwellings is required by section 6, subsection (1), (c), *ante*, p. 602.

(5.) If the local authority erect any dwellings out of funds to be provided under this part of this Act, they shall, unless the confirming authority otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

As to the funds provided under this part of the Act, see section 24, *post*, p. 614.

The local authority are not to be permitted to make themselves landlords, except for the period above limited, without the consent of the confirming authority. Such consent will, no doubt, be given where it is impracticable to sell without loss. The ten years are to run from the date of completion of the buildings.

(6.) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying of the scheme into effect by him in respect of such land.

As to the owner of the first estate of freehold, see the note to section 6 (3), *ante*, p. 603.

13. If within five years after the removal of any buildings on the land set aside by any scheme authorised by a confirming Act as sites for working men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this part of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary. Completion of scheme on failure by local authority.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 10.

As to the modifications which may be made in this scheme, see section 15, *post*.

This section will apply after five years from the removing of the buildings if during that period the local authority has been unable to carry out the scheme in the manner provided by section 12.

14. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses. Notice to occupiers by placards.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 11.

The "taking" above referred to evidently means "taking possession of."

The object of the section is apparently to prevent the turning out of numbers of poor tenants or occupiers without adequate warning.

Section 15.

Power of confirming authority to modify authorised scheme.

15. (1.) The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised by a confirming Act, may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme.

This section practically re-enacts 38 & 39 Vict. c. 36, s. 12.

As to what might have been inserted in the original scheme with reference to the provision of dwelling accommodation for persons of the working class, see section 11, *ante*, p. 606.

(2.) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this part of this Act on the completion of an improvement scheme.

In the cases mentioned in the proviso the same procedure must be observed before obtaining the modifying provisional order as that prescribed by sections 7—9, *ante*, p. 603, for obtaining the original order.

Inquiries with respect to Unhealthy Areas.

Inquiry on default of medical officer in certain cases.

16. (1.) Where in any district twelve or more ratepayers have complained to a medical officer of health of the unhealthiness of any area within that district, and the medical officer of health has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a legally qualified medical practitioner to inspect such area, and to make representations to the confirming authority, stating the facts of the case, and whether, in his opinion, the area or any part thereof is or is not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it states that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority.

This section re-enacts 38 & 39 Vict. c. 36, s. 15.

Under section 5, sub-section (2), *ante*, p. 602, any twelve ratepayers may complain to the medical officer of health of the unhealthiness of an area. This sub-section gives them an appeal if he fails to inspect the area or to make an official representation, or if he makes a representation that the area is not unhealthy. The appeal outside the Metropolis is to the Local Government Board.

As to the payment of costs, see the next sub-section.

If the area is found to be unhealthy by the person who inspects it his representation will become an official representation, upon which the local authority must act as provided by section 4, *ante*, p. 601.

Note to
Section 16.

(2.) The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the medical practitioner appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where he is of opinion that the area or any part thereof is an unhealthy area.

(3.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

The rule of court may be enforced like a judgment of the High Court. See 1 & 2 Vict. c. 110, s. 18.

17. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme, and to any other matter into which he is directed by this Act or the confirming authority to inquire for the purposes of this Act.

Proceedings
on local
inquiry.

This section practically re-enacts 38 & 39 Vict. c. 36, s. 16.

Local inquiries may be ordered under section 8, sub-section (3), and section 10. See also section 11, sub-section (1) (b).

See, further, as to local inquiries, section 85, *post*, p. 653.

18. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

Notice of
inquiry to
be publicly
given.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 17.

19. The officer conducting such inquiry shall have power to administer an oath; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient.

Power to
administer
oath.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 18.

Acquisition of Land.

20. The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement, shall not, except to the extent set forth in the Second Schedule to this Act, apply to any lands taken in pursuance of this part of this Act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this part of this Act in the same manner as if they were enacted in

Acquisition
of land.

Section 20. the body thereof : subject to the provisions of this part of this Act and to the provisions following ; that is to say,

This section is a re-enactment of 38 & 39 Vict. c. 36, s. 19, except in so far as it is re-enacted by the next section.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, the expression "the Lands Clauses Acts" means, as respects England and Wales, 8 & 9 Vict. c. 18 ; 23 & 24 Vict. c. 106 ; 32 & 33 Vict. c. 18 ; 46 & 47 Vict. c. 15 ; and any Acts for the time being in force amending the same, *e.g.*, 58 & 59 Vict. c. 11. All these Acts are set out in the Appendix, *post*. The provisions in Schedule II., *post*, are substituted for the compulsory purchase clauses of these Acts.

The local authority taking premises under this part of the Act are liable to make good to the parish the deficiency in the rates occasioned thereby, under section 133 of the Lands Clauses Act, 1845. *St. Leonard's, Shoreditch (Vestry of)*, v. *London County Council* [1895], 2 Q. B. 104 ; 72 L. T. (N.S.) 802 ; 43 W. R. 598 ; 59 J. P. 423 ; 11 T. L. R. 420.

- (i.) This part of this Act shall authorise the taking by agreement of any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily.

The provisions of the Lands Clauses Acts as to the taking of lands by agreement will apply to any lands required for the purposes of the scheme ; but no lands may be compulsorily acquired, except in so far as that is expressly authorised by the scheme.

- (ii.) In the construction of the Lands Clauses Acts, and the provisions in the Second Schedule to this Act, this part of this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking ; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

Special provision as to compensation.

21. (1.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this Act requires to be assessed—

- (a.) The estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase (a) of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of property which may be constituted an unhealthy area under this part of this Act ; (b) and

- (b.) In such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this Act of an advertisement stating the fact of the improvement scheme having been made, shall not (unless such addition or improvement was necessary for the maintenance

of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands ;(c) and

Note to
Section 21.

(a) Therefore the usual 10 per cent. for compulsory purchase will not be added to the purchase money. Compare section 41 (2) (a), *post*, p. 630.

(b) This clause is a re-enactment of 38 & 39 Vict. c. 36, s. 19 (2).

(c) This clause is a re-enactment of 45 & 46 Vict. c. 54, s. 4. That section was not in force when the action of *Wilkins v. Mayor, &c., of Birmingham*, 25 Ch. D. 78 ; 49 L. T. (N.S.) 468 ; 32 W. R. 118 ; 48 J. P. 231, was commenced. There it was held, independently of that section, that the publication under the schedule of the Act of 1875 was analogous to the notice to treat under the Lands Clauses Acts, and that a landowner affected by it could not afterwards change his position, or obtain an increased interest in premises so as to entitle him to increased compensation.

(2.) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove—

(1st) That the rental of the house or premises was enhanced by reason of the same being used for illegal purposes(a) or being so overcrowded as to be dangerous or injurious to the health of the inmates ;(b) or

(2ndly) That the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances,(c) or are in a state of defective sanitation, or are not in reasonably good repair ; or

(3rdly) That the house or premises are unfit, and not reasonably capable of being made fit, for human habitation ;(d)

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a.) Shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and

(b.) Shall, in the second case, be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be ; and

(c.) Shall, in the third case, be the value of the land, and of the materials of the buildings thereon.

As to the whole of this sub-section, compare section 41 (3), *post*, p. 631.

(a) This is a new provision.

(b) This provision was contained in 42 & 43 Vict. c. 63, s. 3.

(c) This provision was also contained in the Act last above-mentioned, but the rest of the clause is new.

(d) This clause is new.

Section 22.

Extinction
of rights of
way and other
easements.

22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this part of this Act, or as near thereto as circumstances admit.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 20. It was held that that section applied to ancient lights in respect of premises adjoining the lands purchased, and that the loss of such ancient lights was matter for compensation by the local authority. *Badham v. Morris*, 45 L. T. (N.S.) 579. That decision was followed in *Swanston v. Finn and the Metropolitan Board of Works*, 52 L. J. Ch. 235; 48 L. T. (N.S.) 634; 31 W. R. 498. There it was held that the effect of the section is, that upon the purchase of land by a local authority under the Act, all easements whatsoever affecting the land became extinguished from thenceforth, subject only to this, that compensation is to be paid by the local authority to persons injured as provided by the section. In that case a local authority had purchased and taken a house for the purpose of an improvement scheme. The plaintiffs, the owners of adjoining land, claimed to be entitled to a right to support to a building therein from the house so purchased, and brought an action to restrain the local authority from removing the house in such a way as to interfere with the plaintiffs' right to support. It was held that the only right the plaintiffs could have was to receive compensation under the section, and that the action must therefore fail. In a later case it was held that the section applied to the easement of light, and that it included cases where a right or easement was in process of being acquired by enjoyment under the Prescription Act at the date of the purchase of the land, and had the effect of extinguishing such inchoate rights as well as rights or easements already acquired over the land; and, therefore, that the owner of a house to which there had been access of light over land purchased by a local authority under the Act for a period of ten years before and ten years after such purchase, did not gain an easement of light under the Prescription Act by reason of such twenty years' enjoyment. But, *semble*, such an owner would be entitled to compensation to the extent to which the value of his house might be diminished by the operation of this section. *Barlow v. Ross*, 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. (N.S.) 552; 38 W. R. 372; 54 J. P. 660; 6 T. L. R. 200.

Application of
lands for ac-
commodation
of working
classes.

23. A local authority may, for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

This section is a re-enactment of 42 & 43 Vict. c. 63, s. 4.

It may be open to question whether this section would authorise the appropriation of lands acquired for some other specific purpose.

Expenses.

Formation of
improvement
fund for pur-
poses of Act.

24. (1.) The receipts of a local authority under this part of this Act shall form a fund (in this Act referred to as "the Dwelling-house Improvement Fund"), and their expenditure shall be defrayed out of such fund.

This section, except sub-section (4), is a re-enactment of 38 & 39 Vict. c. 36, s. 21.

Section 24.

(2.) The moneys required in the first instance to establish such fund and any deficiency for the purposes of this part of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

In the case of an urban authority, the local rates are the general district rates.

As to the power to borrow money for the purpose of this part of the Act, see section 25, *infra*.

(3.) In settling any accounts of the local authority in respect of any transactions under this part of this Act, care shall be taken that, as far as may be practicable, all expenditure shall ultimately be defrayed out of the property dealt with under this part of this Act; and any balances of profit made by the local authority under this part of this Act shall be applicable to any purposes to which the local rate is for the time being applicable.

In the case of an urban authority, this balance will be payable into the general district fund.

(4.) Any limit imposed on or in respect of local rates by any other Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses under this part of this Act.

This provision was contained in 38 & 39 Vict. c. 36, s. 22. It seems to be intended to meet cases where, by reason of local Acts, there is some limit to the amount which may be raised by the local Act, either generally or for purposes of improvement, such as those to which this Act applies.

(5.) The local authority may carry to the account of the Dwelling-house Improvement Fund any such money or produce of any property, as is legally applicable to purposes similar to the purposes of this part of this Act; and in case of doubt as to whether, in any particular case, the purposes are so similar, the confirming authority may decide such doubt, and such decision shall be conclusive.

In the case of an urban authority, the confirming authority is the Local Government Board. See section 8, *ante*, p. 604.

It is not quite clear what money, &c., is legally applicable to the purposes in this section mentioned, and it will be prudent to obtain the decision of the confirming authority in all cases.

25. (1.) A local authority may, in manner in this section mentioned, borrow such money as is required for the purposes of this part of this Act on the security of the local rate.

Power of borrowing money for the purposes of Part I. of Act.

This section, together with section 24 (4), *ante*, re-enacts 38 & 39 Vict. c. 36, s. 22. In the case of an urban authority the local rate is the general district rate. See Schedule I., *post*.

(2.) For the purpose of such borrowing, the London County Council may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works Loans Acts, 1869 to 1871, but all moneys required for the payment of the dividends on and the redemption of the consolidated stock created for the purposes of this part of this Act shall be charged to the special county account to which the expenditure for the purposes of this part of this Act is chargeable.

Section 25.10 & 11 Vict.
c. 16.

(3.) For the purpose of such borrowing, the Commissioners of Sewers for the City of London may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this part of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the Commissioners of Sewers, the clauses of the Commissioners' Clauses Act, 1847, with respect to the mortgages to be executed by the Commissioners shall be incorporated with this part of this Act; and in the construction of that Act "the special Act" shall mean this part of this Act; "the commissioners" shall mean the Commissioners of Sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the Commissioners of Sewers by this part of this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

(4.) For the purpose of such borrowing, the urban sanitary authority shall have the same power of borrowing as they have under the Public Health Acts for the purpose of defraying any expenses incurred by them in the execution of those Acts.

The borrowing powers of an urban authority are contained in the Public Health Act, 1875, sections 233—243, *ante*, p. 314. The consent of the Local Government Board will be necessary for any loan.

(5.) The Public Works Loan Commissioners may, on the recommendation of the confirming authority, lend to any local authority any money required by them for the purposes of this part of this Act, on the security of the local rate. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority.

In the case of an urban authority the local rate is in most cases the general district rate.

See the Public Works Loans Acts (38 & 39 Vict. c. 89; 39 & 40 Vict. c. 31; 41 & 42 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 46 & 47 Vict. c. 42; 50 & 51 Vict. c. 37; 55 & 56 Vict. c. 61; 57 & 58 Vict. c. 11), set out in the Appendix.

As to the rate of interest on loans from the Public Works Loans Commissioners, see section 83, *post*, p. 652.

General Provisions.

Provision
in case of
absence of
medical officer
of health.

26. In case of the illness or unavoidable absence of a medical officer of health, the authority, board, or vestry, who appointed him may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, for the period of six months, or any less period to be named in the appointment.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 14.

The Public Health Act, 1875, section 191, *ante*, p. 263, provides that in case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board; and this section was extended to the Commissioners of Sewers in the City

of London, and to metropolitan district boards and vestries by section 40 of the Local Government Act, 1888. The provision in the above section, therefore, seems hardly to be required. *Quære*, is the appointment under the above section only for purposes of this Act?

**Note to
Section 26.**

27. The confirming authority may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act.

Power of confirming authority as to advertisements and notices.

This is a re-enactment of 38 & 39 Vict. c. 36, s. 26.

Forms have been issued under this section by the Local Government Board. See the *London Gazette* of October 3rd, 1890. These forms are set out in Appendix II., *post*.

28. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this part of this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

Power of confirming authority to dispense with notices in certain cases.

This section is a re-enactment of 38 & 39 Vict. c. 36, s. 27.

PART II.

UNHEALTHY DWELLING-HOUSES.(a)

Preliminary.

29. In this part of this Act, unless the context otherwise requires— Definitions :

The expression “street” includes any court, alley, street, square, or row of houses : (b)

The expression “dwelling-house” means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined :

The expression “owner,” in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired : (c)

Section 29. The expression "closing order" means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

"Closing order."

(a) This part of the Act consolidates and amends the Artizans Dwellings Acts (31 & 32 Vict. c. 130 ; 42 & 43 Vict. c. 64 ; 45 & 46 Vict. c. 54, Part II.). It applies both to urban and rural sanitary districts. See Schedule I., *post*.

(b) This definition of a street is much more restricted than that in the Public Health Act, 1875, s. 4, as to which see *ante*, p. 12. It applies only to a street in the ordinary sense, *i.e.*, a road, court, &c., with houses built upon or in it.

(c) By section 3 of the Lands Clauses Consolidation Act, 1845, the word "owner" is to be understood to mean any person or corporation who, under the provisions of this or the special Act, would be entitled to sell and convey lands to the promoters of the undertaking.

In July, 1886, the tenant of premises was possessed of them as assignee of a lease expiring at Michaelmas, 1886, and was also the assignee of another lease of the same premises for twenty-one years, commencing on the expiration of the first lease. In the same month the vestry, in the exercise of their powers under the 31 & 32 Vict. c. 130, caused copies of the reports of their officer of health and their surveyor, with a notice of the time and place appointed for their consideration, to be served upon the tenant as being the owner. In the following October an order was made by the vestry for the demolition of the premises. The work required was done by the tenant, who upon its completion applied to and obtained from the vestry a charging order on the premises. It was held that, although the interest of the tenant in the new lease was in law only an *interesse termini*, he had such an interest in the premises at the time when proceedings were initiated by service of the notices upon him as to make him the "owner" within the meaning of the section. It was held also that the point of time to be looked at in order to determine the ownership for the purposes of the Act was the date of the service of the notices, and not of the making of the order for demolition. *Reg. v. St. Marylebone (Vestry of)*; *Ex parte Berners*, 20 Q. B. D. 415 ; 57 L. J. M. C. 9 ; 58 L. T. (N.S.) 180 ; 36 W. R. 271 ; 52 J. P. 534.

The owner of an insanitary dwelling to be served with notice under section 32, *post*, is the person defined by the above section. Where the person receiving the rents and profits is a leaseholder with less than twenty-one years to run, he is not the person to be served, although section 32 and Schedules III. and IV., *post*, refer to the Public Health Act, 1875, and the Nuisances Removal Act, 1854, for purposes of procedure, and these Acts regard the receiver of the rents and profits as owner. *Osborne v. Skinnars Company*, 60 L. J. M. C. 156 ; 39 W. R. 715. This decision was followed in a recent case (unreported), heard before WRIGHT and COLLINS, JJ., Trin. Sittings, 1892, notwithstanding the repeal by the Public Health (London) Act, 1891, of the Nuisances Removal Acts.

Buildings unfit for Human Habitation.

Representa-
tion by
medical
officer of
health.

30. It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

This section replaces section 5 of 31 & 32 Vict. c. 130.

"District" is defined by section 92, and Schedule I., *post*. It includes an urban and a rural sanitary district.

The representation made by the medical officer of health must be in writing. See section 79 (2), *post*, p. 652.

For the definition of a dwelling-house see the preceding section.

The premises must be in a state dangerous or injurious to health. Mere want of repair would not necessarily fulfil this condition.

Representa-
tion by house-
holders' com-
plaint.

31. (1.) If in any district any four or more householders (a) living in or near to any street complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to

Section 31.

the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent^(b) the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house, and making a representation thereon to the local authority.

This sub-section replaces section 12 of 31 & 32 Vict. c. 130.

(a) There is no definition of a "householder" in the Act, but the meaning of the word is well understood. It means the resident occupier of a house as distinguished from an owner on the one hand, and a lodger on the other.

A parish council can also now make a complaint or representation under this section. See 56 & 57 Vict. c. 73, s. 6 (2), *post*, p. 701.

(b) This representation must be in writing. See section 79 (2), *post*, p. 652.

(2.) If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London, or not being a rural sanitary authority in any other county,^(a) declines or neglects to take any proceedings to put this part of this Act in force, the householders who signed such complaint may petition the Local Government Board for an inquiry, and the said Board after causing an inquiry^(b) to be held may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority.

This sub-section replaces section 13 of 31 & 32 Vict. c. 130.

(a) This sub-section applies only to urban sanitary authorities.

(b) As to the holding of this inquiry see section 85, *post*, p. 653.

Closing Order and Demolition.

32. (1.) It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and, if on the representation of the medical officer,^(a) or of any officer of such authority, or information given, any dwelling-house appears to them to be in such state, to forthwith take proceedings against the owner or occupier for closing the dwelling-house under the enactments set out in the Third Schedule to this Act.^(b)

Duty of local authority as to closing of dwelling-house unfit for human habitation.

(a) This refers to the representation made under sections 30 and 31.

(b) See the enactments in the 3rd Schedule and the notes thereto, *post*. The first step in the procedure is to give notice to the owner or occupier to execute the works necessary to put the house in proper condition, and upon his failing to do so to apply to a magistrate, or justices, for a closing order.

As to the person who must be proceeded against as owner, see *Osborne v. Skinners Company*, *ante*, p. 618.

(2.) Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed, whether the same be occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding twenty pounds, and make a closing order, and the forms for the purposes of this section may be those in the Fourth Schedule to this Act, or to the like effect, and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty as well as to a closing order.

See the forms in the 4th Schedule, *post*. Some of these forms are very defective.

There is no appeal against a closing order. Section 35, *post*, p. 621, gives an

Note to Section 32. appeal against an order of the local authority, but not against an order of justices such as a closing order.

(3.) Where a closing order has been made as respects any dwelling-house, (a) the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order. (b) Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily. (c)

(a) This order can only be made by justices.

(b) As to the recovery of this penalty see section 90, *post*, p. 654.

(c) A civil debt is recoverable under the Summary Jurisdiction Act, 1879, by distress, but a warrant of commitment cannot be issued to enforce it, except upon judgment summons, and proof of the defendant's means to pay.

Order for
demolition
of house
unfit for
habitation.

33. (1.) Where a closing order has been made in respect of any dwelling-house, and not been determined by a subsequent order, (a) then the local authority, if of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public, or of the inhabitants of the neighbouring dwelling-houses, (b) shall pass a resolution that it is expedient to order the demolition of the building.

(a) The order determining the previous order is made under section 13 of the Nuisances Removal Act, 1855, or section 97 of the Public Health Act, 1875, when the house has been rendered fit for occupation. See these sections in Schedule III., *post*.

(b) It is difficult to understand how the continuance of a closed house can be dangerous or injurious to the health of the public, or of the inhabitants of adjoining houses, unless it be by reason of the existence of some nuisance in the house.

(2.) The local authority shall cause notice of such resolution to be served on the owner (a) of the dwelling-house, and such notice (b) shall specify the time and place appointed by the local authority for the further consideration of the resolution, not being less than one month after the service of the notice, and any owner of the dwelling-house shall be at liberty to attend and state his objections to the demolition.

(a) For the definition of "owner," see section 29, *ante*, p. 617. There may be more than one person answering the description of an owner, and each person must be served with a notice. See also section 47, *post*, p. 637.

(b) As to the service of the notice, see section 49, *post*, p. 639, and as to its form, see section 86, *post*, p. 653.

"Month" means calendar month. 52 & 53 Vict. c. 63, s. 3.

(3.) If upon the consideration of the resolution and the objections the local authority decide that it is expedient so to do then, unless an owner

undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, the local authority shall order the demolition of the building. Section 33.

The order must be under seal, and authenticated, as provided by section 86, *post*.
As to the execution of the order for demolition, see section 34, *infra*.
Appeal lies against this order under section 35, *infra*.

(4.) If an owner undertakes as aforesaid to execute the said works, (a) the local authority may order the execution of the works within such reasonable time as is specified in the order, and if the works are not completed within that time or any extended time allowed by the local authority or a court of summary jurisdiction, the local authority shall order the demolition of the building. (b)

(a) That is, if the owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation.

(b) As to the execution of the order for demolition, see the next section.

Appeal lies against this order under section 35, *infra*.

The order must be under seal, and authenticated, as required by section 86, *post*.

34. (1.) Where an order for the demolition of a building has been made, the owner (a) thereof shall within three months after service of the order proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner. Execution of an order for demolition, and provision as to site.

(a) See the definition in section 29, *ante*, p. 617; the note to section 33 (2), *ante*, p. 620; and section 47, *post*, p. 637.

(2.) Where a building has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such building; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate the same, and in the event of non-compliance with the order, may at the expense of the owner abate or alter the same.

The question whether the new building will be dangerous or injurious to health must be decided by the local authority.

Appeal lies against this order under the next section.

The order must be under seal, and authenticated, as provided by section 86, *post*.

35. (1.) Any person aggrieved by an order of the local authority under this part of this Act, may appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted; and section thirty-one of the Summary Jurisdiction Act, 1879, respecting appeals from courts of summary jurisdiction to courts of quarter sessions, shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction. Appeal against order of local authority. c. 49.

This section replaces section 9 of 31 & 32 Vict. c. 130, with considerable amendments.

The orders of the local authority above mentioned are—the order for demolition (section 33 (3) and (4)), the order to abate (section 34 (2)), the order granting a

**Note to
Section 35.**

charge (section 36 (1)), the order to pull down obstructive buildings (section 38 (3)). See the several sections.

The foregoing section applies only to appeals against orders of the local authority. Section 32 (2) assumes that there is an appeal against a closing order made by justices, but it does not appear that there is any such appeal.

The provisions of 42 & 43 Vict. c. 49, s. 31, have been already set out, *ante*, p. 365.

After an order for demolition has been made appeal under this section is the only remedy; the magistrate has no jurisdiction to inquire whether the house has been rendered fit for habitation. *Reg. v. de Rutzen*, 9 T. L. R. 41.

(2.) Provided that—

(a.) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person;

(b.) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

Certiorari is no longer necessary to remove the proceedings into a superior court. See 42 & 43 Vict. c. 49, s. 40. Since the passing of that Act the practice is for the solicitor to give notice to the clerk of the peace that he requires the case to be sent up to the Crown Office, and the clerk of the peace must transmit the case accordingly. *Clark v. Alderbury Union Assessment Committee*, 29 W. R. 334; 45 J. P. 359; and see the note, *ante*, p. 366.

"Month" means calendar month. 52 & 53 Vict. c. 63, s. 3

The court of quarter sessions must find the facts. It will be for the High Court to decide what consequences of law or otherwise should result from the facts so found.

Grant of
charges by
way of
annuity to
owner on
completion of
works.

36. (1.) Where any owner(a) has completed, in respect of any dwelling-house, any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works, and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been properly incurred, shall make an order accordingly, charging on the dwelling-house(b) an annuity to repay the amount.

Sub-sections (1) (2) and (4), of this section replace section 25 of 31 & 32 Vict. c. 130.

(a) See the definition of the term "owner" in section 29, *ante*, p. 617. This section enables any person who fulfils the description of an owner, and who executes the necessary works, to obtain an order charging the entire ownership with an annuity to repay the amount.

(b) This will be a charge on the house itself, not upon any particular interest therein. It will, therefore, take precedence of mortgages, and persons possessed of ordinary charges. See the next section, and compare the charge on the premises created by section 257 of the Public Health Act, 1875; and see the cases decided with reference to that section, *ante*, p. 342.

(2.) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators or assigns.

As to the transfer of the annuity, see section 37 (5), *post*.

(3.) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner thereof. Section 36.

Under the corresponding provision in 31 & 32 Vict. c. 130, s. 27, it was held that the annuity was recoverable not from the freeholder but from the lessee in possession. *Hyde v. Berners*, 52 J. P. 453 ; 5 T. L. R. 406.

Therefore the holder of the rentcharge will be entitled to distrain. See *Dodds v. Thompson*, L. R. 1 C. P. 133 ; 35 L. J. C. P. 97 ; 14 W. R. 476. And an action will lie for arrears. *Thomas v. Sylvester*, L. R. 8 Q. B. 368 ; 42 L. J. Q. B. 237 ; 29 L. T. (N.S.) 290 ; 21 W. R. 912 ; *Scottish Widows' Fund v. Craig*, 20 Ch. D. 208 ; 51 L. J. Ch. 363 ; 30 W. R. 463 ; *Booth v. Smith*, 51 L. T. (N.S.) 395 ; 47 J. P. 759.

The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 44, provides that a rentcharge may be recovered by distress if unpaid for twenty-one days after the time appointed for payment ; by entry and receipt of the rents and profits if unpaid for forty days ; and in the like case by demise by deed to a trustee for a term of years on trust by mortgage, sale, or demise, for all or any part of the term of the land charged, or any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means to raise and pay the annual sum, and any arrears thereof, and all costs and expenses.

(4.) Charging orders made under this section shall be made according to the Form marked A. in the Fifth Schedule to this Act, or as near thereto as the circumstances of the case will admit.

See the form in the schedule, *post*. See also the next section as to the incidence of the charge, registration, &c.

37. (1.) Every charge created by a charging order under this part of this Act shall be a charge on the dwelling-house specified in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quit rents and other charges incident to tenure, (a) tithe commutation rentcharge, and any charge created under any Act authorising advances of public money ; and where more charges than one are charged under this part of this Act on any dwelling-house, such charges shall, as between themselves, take order according to their respective dates. (b) Incidence of charge.

This sub-section replaces section 26 of 31 & 32 Vict. c. 130.

(a) Quit rents are rents paid in respect of the tenure of an estate in fee simple. They must not be confounded with ground rents, which are not charges incident to tenure.

(b) See the note to section 36 (1), *ante*, p. 622.

(2.) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this part of this Act directed with reference to or consequent on the obtaining of such order, or the making of such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

This is a re-enactment of 31 & 32 Vict. c. 130, s. 28.

This provision makes the charging order an indefeasible security.

(3.) Every such charging order, if it relates to a dwelling-house in the area to which the enactments relating to the registration of land in Middlesex apply, or to a dwelling-house in Yorkshire, shall be registered

Section 37. in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

This and the next sub-section re-enact 31 & 32 Vict. c. 130, s. 29.

A question may arise whether charging orders under this Act do not require registration under 51 & 52 Vict. c. 31. See, as to this Act, *Reg. v. Vice-Registrar of the Office of Land Registry*, 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. (N.S.) 117; 38 W. R. 236; 54 J. P. 120. But for this sub-section, which, by expressly providing for registry in Middlesex and Yorkshire, may imply that registration is not required elsewhere, it would apparently have been necessary to register under that Act, and it will certainly be prudent to do so.

(4.) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the local authority, certified to be true copies by the clerk of the local authority, shall, within six months after the date of the order, be deposited with the clerk of the peace of the county in which the dwelling-house is situate, and be by him filed and recorded.

(5.) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred. Any transfer may be in the form marked B. in the Fifth Schedule to this Act, or in any other convenient form.

This sub-section replaces 31 & 32 Vict. c. 130, s. 30.

See the form in the schedule, *post*.

Obstructive Buildings.(a)

Power to local authority to purchase houses for opening alleys, &c.

38. (1.) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings, it causes one of the following effects, that is to say,—

(a.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation, or dangerous or injurious to health ; or

(b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings ;

in any such case the medical officer of health shall represent (b) to the local authority the particulars relating to such first-mentioned building (in this Act referred to as “an obstructive building”) stating that, in his opinion, it is expedient that the obstructive building should be pulled down.

(a) Section 38, except as noted under sub-sections (2) (7) (10) and (12), re-enacts 45 & 46 Vict. c. 54, s. 8.

(b) This representation must be in writing. See section 79, *post*.

(2.) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

This is a new provision. A parish council may also now make a representation under this section. See 56 & 57 Vict. c. 73, s. 6 (2), *post*, p. 701.

For the definition of “district,” see section 92, *post*, p. 654.

(3.) The local authority on receiving any such representation as above in this section mentioned shall cause a report (a) to be made to them respecting the circumstances of the building, and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they

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decide to proceed, shall cause a copy of both the representation and report to be given to the owner^(b) of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.^(c)

(a) The section does not say who is to make this report, but in general it will be made by the surveyor of the local authority. It should be observed that the words of the sub-section are imperative so far as regards the making of the report.

(b) See the definition of "owner," section 29, *ante*, p. 617.

(c) As to this appeal, see section 35, *ante*, p. 621.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section, and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Acts^(a) with respect to the purchase and taking of lands otherwise than by agreement, shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act),^(b) and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(a) As to these Acts, see the note to section 20, *ante*, p. 612.

(b) The provisions here referred to are those contained in this section, and in section 41, *post*, p. 630.

(5.) The owner of the lands may, within one month after notice to purchase the same is served upon him, declare that he desires to retain the site of the obstructive building, and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site, and shall receive compensation from the local authority for the pulling down of the obstructive building.

"Month" means calendar month. 52 & 53 Vict. c. 63, s. 3.

As to the restrictions imposed upon the owner for building on the site, see sub-section (10), *post*, p. 627.

As to the assessment of compensation, see the subsequent sub-sections of this section, and section 41, *post*, p. 630.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall, in case of difference, be settled by arbitration in manner provided in this part of this Act.

The provisions of this part of the Act as to arbitration are contained in section 41, *post*, p. 630.

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(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

This provision is new, and creates an exception to section 92 of the Lands Clauses Act, 1845, which would otherwise apply. That section provides that no party shall at any time be required to sell or convey to the promoters a part only of any house, or other building or manufactory, if such party be willing and able to sell and convey the whole thereof. Under the text the owner may be compelled to sell part only, if such part can be severed without detriment, subject only to the payment of compensation for severance. See the notes to 8 & 9 Vict. c. 18, s. 92, *post*.

(8.) Where in the opinion of the arbitrator^(a) the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section,^(b) the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts, relating to private improvement expenses and to private improvement rates, shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.^(c)

(a) This is, the arbitrator appointed under section 41, *post*, p. 630.

(b) That is, the buildings which by the obstructive buildings were rendered unfit for habitation, or injurious to health, &c. See sub-section (1), *ante*, p. 624.

(c) Private improvement expenses are recovered by means of private improvement rates of such amount as will be sufficient to discharge such expenses with interest at 5 per cent. per annum, in such period not exceeding 30 years as the local authority may in each case determine. The rates are payable by the occupier, who is allowed to deduct a certain portion of them from the rent. They may be redeemed by any owner or occupier. See sections 213—215 of the Public Health Act, 1875, *ante*, p. 291.

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

The procedure is under 8 & 9 Vict. c. 18, ss. 22—24, by summons. The decision of the justices is not an order, and the proceedings need not be taken within six months. *Reg. v. Edwards*, 13 Q. B. D. 586; 53 L. J. M. C. 149; 51 L. T. (N.S.) 856; 49 J. P. 117.

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(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

This provision is new, and takes the place of sub-section (7) of 45 & 46 Vict. c. 54, s. 8.

The owner may retain the site under sub-section (5), *ante*, p. 625. An obstructive building is described in sub-section (1), *ante*, p. 624.

An appeal will lie against the local authority under section 35, *ante*, p. 621.

No provision is made for the recovery of the expense from the owner, but it will apparently be recoverable as a debt.

(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

As to the application of the proceeds of the sale, see section 82, *post*, p. 652.

(12.) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

This provision is new. The land may be dedicated as a public recreation ground if the local authority think fit. See the provisions of the next section.

Scheme for Reconstruction.

39. (1.) In any of the following cases, that is to say—

(a.) Where an order for the demolition of a building has been made in pursuance of this part of this Act, (b) and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either—

Scheme for
area com-
prising houses
closed by
closing
order. (a)

- (i.) Dedicated as a highway or open space, or
- (ii.) Appropriated, sold, or let for the erection of dwellings for the working classes, or
- (iii.) Exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection; or

(b.) Where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings,

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or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings, is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and re-arrangement of the said buildings, or of some of them, is necessary to remedy the said evils, and that the area comprising those buildings, and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act, (c)

the local authority shall pass a resolution to the above effect, and direct a scheme to be prepared for the improvement of the said area.

(a) The provisions of this section are new.

(b) An order for demolition may be made under section 33 (1), and section 38 (1).

(c) This provision seems to be independent of those in the preceding sections, which relate to houses unfit for human habitation and obstructive buildings. It may be said to relate to a group of houses as distinguished from an area which might be dealt with under Part I.

(2.) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained.

The notices must, therefore, be served in manner provided by section 7, *ante*, p. 603.

(3.) The local authority shall, after service of such notice, petition the Local Government Board (a) for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, (b) and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme, either absolutely, or subject to conditions or modifications, would be beneficial to the health of the inhabitants of the said buildings, or of the neighbouring dwelling-houses, may, by order, (c) sanction the scheme, with or without such conditions or modifications.

(a) The petition must be presented to the Local Government Board in every case, even in the county and city of London, though in that county and city the Board is not the confirming authority under Part I.

(b) As to the holding of a local inquiry, see section 85, *post*, p. 653.

(c) As to this order, see the note to section 85 (2), *post*. The order will be conclusive.

(4.) Upon such order being made, the local authority may purchase by agreement the area comprised in the scheme as so sanctioned, and if they agree for the purchase of the whole area, the order, save so far as it provides for the taking of land otherwise than by agreement, shall take effect without confirmation. If they do not so agree, the order shall be published by the local authority by inserting a notice thereof in the *London Gazette*, and by serving notice thereof on the owners of every part of the area.

No confirmation will be required if the local authority can come to terms for the purchase of the whole area. But if any owner refuses to agree, the order must be

published and served as above provided, and if any owner then petitions, as provided by the next sub-section, the order will be provisional only, and must be confirmed by Act of Parliament.

**Note to
Section 39.**

As to the service of the notices, see section 49, *post*, p. 639.

(5.) Any owner may, within two months after such publication, petition the Local Government Board against the order, and if such petition is presented and is not withdrawn, the order shall be provisional unless it is confirmed by Act of Parliament.

(6.) If the Local Government Board are satisfied that the order has been duly published, and that two months after such publication have expired, and that either a petition has not been presented, or if presented has been withdrawn, they shall confirm the order, and thereupon such order shall come into operation, and have effect as if it were enacted by this Act.

(7.) The order may incorporate the provisions of the Lands Clauses Acts,^(a) and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order : Provided that the amount of compensation shall, in case of difference, be settled by arbitration, in manner provided by this part of this Act.^(b)

(a) See the note to section 20, *ante*, p. 612.

(b) The settlement of compensation under this part of the Act is provided for by section 41, *post*, p. 630.

(8.) The provisions of Part I. of this Act relating to costs to be awarded in certain cases by a committee of either House of Parliament,^(a) to the duty of a local authority to carry a scheme, when confirmed, into execution,^(b) to the completion of a scheme on failure by a local authority,^(c) and to the extinction of rights of way and other easements,^(d) shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act.

(a) See section 9, *ante*, p. 606.

(b) See section 12, *ante*, p. 608.

(c) See section 13, *ante*, p. 609.

(d) See section 22, *ante*, p. 614.

(9.) The Local Government Board on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution : Provided that—

(a.) If the order sanctioning the scheme was confirmed by Parliament, a statement of such modification shall be laid by the Local Government Board before both Houses of Parliament as soon as practicable ; and

(b.) In any case, if the modification requires a larger expenditure than that sanctioned by the original scheme, or authorises the taking of any property otherwise than by agreement, or injuriously

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affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification shall be published, and the order may be petitioned against, and shall be subject to confirmation, in like manner as if it were an order sanctioning an original scheme under this section.

This sub-section corresponds to section 15 in Part I., *ante*, p. 610. As to the publication of the modification, petition against it, and confirmation, see sub-sections (4), (5), and (6), *ante*, p. 628.

Provisions for accommodation of persons of the working classes.

40. The Local Government Board shall, in any order sanctioning a scheme under this part of this Act, require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced by the scheme as seem to the Board required by the circumstances.

This clause is new, and gives an absolute discretion to the Local Government Board to require or dispense with the provision of accommodation for the working classes, according to the circumstances of each case.

Settlement of Compensation.(a)

Provisions as to arbitration.

41. In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, (b) the following provisions shall have effect; (namely,)

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board. (c)

(a) This section is a re-enactment of 42 & 43 Vict. c. 64, s. 7, with additions as noted under sub-sections (3), (6), and (9), *post*.

(b) Compensation is to be settled by arbitration in cases within section 38 (6), and section 39 (7).

(c) The arbitrator will always be appointed by the Local Government Board, even in the county and city of London.

(2.) In settling the amount of any compensation—

(a.) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase; (a) and

(b.) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings. (b)

(a) This clause is a repetition of section 21 (1) (a), *ante*, p. 612.

Pursuant to a local Act the grand jury at quarter sessions presented that certain houses belonging to the claimant and others were unfit for human habitation and ought to be demolished. The parties could not agree as to the amount of compensa-

tion to which the owners were entitled, and an arbitrator was appointed by the Local Government Board to enquire and assess. A provisional order provided that the estimate of value should be based on the fair market value, due regard being had to the nature and condition of the property and the probable duration of the buildings in their existing state, and to their state of repair, without any additional allowance in respect to the compulsory purchase of the premises. The arbitrator held that the presentment of the grand jury was conclusive as to the premises being unfit for human habitation, and that that fact must be taken into consideration in ascertaining the value of the premises. It was held that this was wrong, and that the claimant was entitled to the market value of the property as producing rent, due regard being had to the terms of the provisional order. *Semble per LOPES, L.J.*, that the presentment of the grand jury was inadmissible as evidence in the enquiry as to the value of the property. *Gough v. Liverpool (Mayor, &c., of)*, 65 L. T. (N.S.) 512; 55 J. P. 789; 7 T. L. R. 581, varying order of Divisional Court, 64 L. T. (N.S.) 596; 55 J. P. 648. Subsequently the arbitrator awarded a sum equal to the market value less 30 per cent. on account of the insanitary condition of the neighbourhood, and the Court held this was right. 56 J. P. 357; 8 T. L. R. 247.

(b) As to this increased value, and its recovery from the owners of the other dwelling-houses, see section 38 (8), (9), *ante*, p. 626.

Note to
Section 41.

(3.) Evidence shall be receivable by the arbitrator to prove—

(1st) That the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes, or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) That the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or

(3rdly) That the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation; (a)

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a.) Shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes, (b) and only by the number of persons whom the dwelling-house was, under all the circumstances of the case, fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b.) Shall, in the second case, be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

(c.) Shall, in the third case, be the value of the land, and of the materials of the buildings thereon.

(a) This sub-section is new. Compare the provisions of section 21 (2), *ante*, p. 613.

(b) Thus, if the house were used as a brothel, its value must be based on its rental if legally used as a dwelling-house.

(4.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct; and in

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default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

The provisions of the Lands Clauses Acts here referred to are contained in 8 & 9 Vict. c. 18, ss. 75—83, *post*.

8 & 9 Vict.
c. 18.

- (5.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this Act.

See these sections, *post*. Section 32 gives the arbitrator power to call for books and documents; section 33 requires the arbitrator to subscribe a declaration before entering upon the reference, such declaration to be annexed to the award when made; section 35 requires the arbitrator to deliver the award to the promoters, *i.e.*, the local authority (see section 38 (4)), who must furnish copies to, and permit inspection by, the other parties; section 36 enables the submission to be made a rule of court; and section 37 provides that an award shall not be set aside for irregularity or want of form.

- (6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do, shall from time to time make an award respecting a portion only of the disputed cases brought before him.

The latter portion of this sub-section is new.

- (7.) In the event of the death, removal, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.
- (8.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.

The costs are not altogether in the discretion of the arbitrator. See the next sub-section, which corresponds to 8 & 9 Vict. c. 18, s. 34. When the costs are payable to a claimant, the text enables the arbitrator to certify them, instead of leaving them to be taxed under 58 & 59 Vict. c. 11, *post*.

As to the recovery of the costs, see sub-section 10.

- (9.) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of

compensation to such party before the appointment of the Section 41. arbitrator.

The first part of this sub-section is a re-enactment of 42 & 43 Vict. c. 64, s. 7, sub-sect. (7), but the last part is new.

The offer referred to must have been made before the appointment of the arbitrator. This express provision as to the date of the offer avoids a difficulty which has arisen in many cases. See, for example, *In re Gray and North Eastern Railway Company*, 1 Q. B. D. 696; 45 L. J. Q. B. 818; 34 L. T. (N.S.) 757; 24 W. R. 758.

The claimant need not deliver a statement unless the local authority give him notice to do so.

- (10.) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

The costs do not become a debt until seven days after demand. The amount is then recoverable as a debt by action in the ordinary way, and the debt will carry interest.

- (11.) The award of the arbitrator shall be final and binding on all parties.

Expenses and Borrowing.

42. (1.) All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed by them out of the local rate; and that authority, notwithstanding any limit contained in any Act of Parliament respecting a local rate, may levy such local rate, or any increase thereof, for the purposes of this part of this Act. Expenses of local authority.

This sub-section replaces 31 & 32 Vict. c. 130, s. 31, and 42 & 43 Vict. c. 64, s. 21.

As to the local rate, see section 92, and Schedule I.

As to the limit to the local rate, see section 24 (4), and the note thereto, *ante*, p. 615.

(2.) Any expenses incurred by a rural sanitary authority under this part of this Act, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, shall be charged as special expenses on the contributory place in respect of which they are incurred.

The expenses of a rural authority in obtaining a closing order will, apparently, be general expenses; all other expenses will be special expenses chargeable upon the particular contributory place. See the Public Health Act, 1875, ss. 229, 230, *ante*, p. 308.

43. (1.) A local authority may borrow for the purpose of raising sums required for purchase money or compensation payable under this part of this Act in like manner, and subject to the like conditions, as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts. Provision as to borrowing.

The borrowing powers of a local authority under the Public Health Acts are contained in sections 233—343 of the Act of 1875, *ante*, p. 314. The loan will be on the security of the local rate, with the consent of the Local Government Board.

This section and section 46, *post*, are now extended to loans for purposes of a scheme for reconstruction. See 57 & 58 Vict. c. 55, *post*, p. 698.

Section 43.

(2.) The Public Works Loan Commissioners may, if they think fit, lend to any local authority the sums borrowed in pursuance of this part of this Act.

This sub-section replaces 31 & 32 Vict. c. 130, s. 32, and 42 & 43 Vict. c. 64, s. 22. See the note to section 25 (5), *ante*, p. 616.

As to the rate of interest on loans from the Public Works Loan Commissioners, see section 83, *post*, p. 652.

Annual account to be presented by the local authority.

44. Every local authority shall every year present to the Local Government Board, in such form as they may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this part of this Act.

This is a new provision, and it is, no doubt, intended to afford such information to the Local Government Board as may enable that Board to form an opinion whether each local authority is carrying out the duty imposed upon it by this part of the Act, and, if necessary, to take steps to enforce the performance of that duty.

In the county of London this annual account must be sent to the Secretary of State. See section 46 (4), *post*, p. 636.

Powers of County Councils.

Powers of county councils.(a)

45. (1.) Where the medical officer of health or any inhabitant householders make a representation or complaint,(b) or give information to any vestry or district board in the administrative county of London, or to the Local Board of Woolwich, or to any rural sanitary authority elsewhere (which vestry, board, or authority is in this Act referred to as the district authority),(c) or to the medical officer of such authority, either respecting any dwelling-house being in a state so dangerous or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(a) This is a new provision. Its effect is to vest in the county council power to put this part of the Act in operation when a local authority have failed to do so. See, however, note (c), *infra*.

(b) See sections 30, 31, 38, *ante*, pp. 618, 624. Any complaint or representation made by a parish council under 56 & 57 Vict. c. 73, s. 6 (2), *post*, p. 701, must be reported to the county council under this section.

(c) The district authority does not include an urban sanitary authority except the Woolwich Local Board. Consequently, the county council cannot act under this section in any urban district, nor will it be necessary for an urban authority (other than the Woolwich Local Board) to report to the county council.

(2.) Where the county council—

(a.) Are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be

made for pulling down an obstructive building specified in any representation under this part of this Act ; and Section 45.

- (b.) After reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority have failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building ;

the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority.

The district authority (see the preceding sub-section) will have the month after notice within which they may themselves proceed to apply for a closing order, to make a demolition order, or as the case may be. After the month their powers will pass to the county council, who may put this part of the Act in operation as if they were the local authority. "Month" means calendar month. 52 & 53 Vict. c. 63, s. 3.

- (3.) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act.

As to these expenses, see section 42, *ante*, p. 633.

- (4.) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission.

There is no general enactment in the Public Health Acts relating to the entry of officers upon premises for the performance of their duties. There are several express provisions enabling them to enter for specific purposes, and the provision which seems to be indicated in the text is that in section 102 of the Public Health Act, 1875, *ante*, p. 124. That section enables an officer to enter any premises for the purpose of examining as to the existence of any nuisance therein at any time between the hours of 9 A.M. and 6 P.M. If admission is refused, a justice, upon complaint made to him upon oath, may, by order, authorise the officer to enter. The text may, however, refer to section 305 of the same Act, *ante*, p. 400.

Special Provisions as to London.

46. This part of this Act shall apply to the administrative county of London with the following modifications :— Application of part of Act to London.

- (1.) The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, for the purpose of this part of this Act, extend to the county and to the city of London, and in the construction of the said provisions, as respects the county of London, any local authority

Section 46.

in that county, and as respects the city of London, the Commissioners of Sewers, shall be deemed to be the urban authority.

The Public Health Acts do not apply to the metropolis, and it was necessary to apply the provisions mentioned in the text because of the enactment in section 38 (8), *ante*, p. 626. For these provisions, see the note to that section.

- (2.) The raising of sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which the London County Council or the Commissioners of Sewers of the city of London, may borrow under Part One of this Act, and a purpose for which a vestry or district board may borrow under the Metropolis Management Act, 1855, and the provisions of Part One of this Act with respect to borrowing, and sections one hundred and eighty-three to one hundred and ninety-one of the Metropolis Management Act, 1855, shall apply and have effect accordingly.

18 & 19 Vict.
c. 120.

As to the borrowing powers of the London County Council and the Commissioners of Sewers under Part I., see section 25 (2) and (3), *ante*, p. 615.

For the incorporated provisions of the Metropolis Management Act, 1855, see "Woolrych's Local Metropolis Management Acts," p. 117. Under these sections district boards and vestries are empowered to borrow on mortgage of the rates authorised to be raised by them under that Act.

- (3.) The London County Council may, if they think fit, lend to a local authority in the administrative county of London the sums borrowed in pursuance of this part of this Act.

As to the power of the London County Council to lend to district boards and vestries in the metropolis, see 53 & 54 Vict. c. 41, s. 8.

- (4.) For the purpose of the assent required for the sale of any portion of the site of an obstructive building by a local authority, and of the account to be presented by a local authority of what has been done by them and of moneys received and paid by them during the previous year, a Secretary of State shall be substituted for the Local Government Board.

The assent to the sale of portion of the site of an obstructive building is that required by section 38 (11), *ante*, p. 627. As to the annual account, see section 44, *ante*, p. 634.

- (5.) Where it appears to the county council, whether in the exercise of the powers of a vestry or district board, (a) or on the representation of a vestry or district board or otherwise, that a scheme under this part of this Act ought to be made, (b) the council may take proceedings for preparing and obtaining the confirmation of a scheme, and the provisions of this Act respecting the scheme shall apply in like manner as if they were the vestry or district board, and all expenses of and incidental to the scheme and carrying the same into effect shall, save as hereinafter mentioned, be borne by the county fund.

a) That is, under section 46 (2), *supra*.

(b) The scheme here referred to is a scheme under section 39, *ante*, p. 627. This provision seems to give the London County Council power to initiate or take up such a scheme in any case or under any circumstances.

- (6.) Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a vestry or district board, they may apply to a Secretary of State, and the Secretary of State, if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the vestry or district board ought to pay, or make a contribution in respect of, the said expenses, the Secretary of State may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the vestry or district board to the council. Section 46.

The payment or contribution will depend, apparently, upon whether the scheme was one which might properly have been dealt with under this part of the Act as distinguished from Part I. If so, the local rate may fairly be required to contribute in relief of the county fund.

- (7.) The county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a scheme under this part of this Act by a vestry or district board, and if a vestry or district board consider that the expenses of carrying into effect any scheme under this part of this Act, or a contribution in respect of those expenses, ought to be paid or made by the county council, and the county council decline or fail to agree to pay or make the same, the vestry or district board may apply to a Secretary of State, and if the Secretary of State is satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the said expenses, he may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the council to the vestry or district board.

This liability of the county council will depend to some extent upon whether the area is not one which might, from its extent, &c., have been dealt with under Part I. See the note to the preceding sub-section.

- (8.) In the application of this section to Woolwich, the local board of health shall be deemed to be a district board, but the raising of any sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which they may borrow under the Public Health Acts, and the Public Health Acts shall apply accordingly.

The local board of Woolwich is to be deemed to be a district board within the meaning of section 45 of this Act ; but their borrowing powers are to be the same as those of an urban authority under section 43, as amended by 57 & 58 Vict. c. 55, *post*.

Supplemental.

- 47.** (1.) Where an owner of any dwelling-house is not the person in receipt of the rents and profits thereof, he may give notice of such ownership to the local authority, and thereupon the local authority shall Provision as to superior landlord.

Section 47. give such owner notice of any proceedings taken by them in pursuance of this part of this Act in relation to such dwelling-house.

See the definition of the word "owner" in section 29, *ante*, p. 617. There may be several persons, each having a different interest, all of whom may be included in the term "owner," and all of whom may be affected by proceedings under this part of the Act, but it is contemplated that the primary liability shall fall upon that owner who is in receipt of the rents and profits. The provision in the text enables any other owner to shift from himself to the owner receiving the rents this primary liability.

As to the effect of this sub-section, see the judgments in *Osborne v. Skinners Company*, *ante*, p. 618.

(2.) If it appears to a court of summary jurisdiction^(a) on the application of any owner of the dwelling-house that default is being made in the execution of any works required to be executed on any dwelling-house in respect of which a closing order has been made,^(b) or in the demolition of any building or any dwelling-house, or in claiming to retain any site,^(c) in pursuance of this part of this Act, and that the interests of the applicant^(d) will be prejudiced by such default, and that it is just to make the order, the court may make an order empowering the applicant forthwith to enter on the dwelling-house, and within the time fixed by the order to execute the said works, or to demolish the building, or to claim to retain the site, as the case may be, and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(a) The expression "court of summary jurisdiction" means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, and whether acting under these Acts, or any of them, or under any other Act, or by virtue of his commission, or under the common law. 52 & 53 Vict. c. 63, s. 13 (11). Having regard to section 20 of the Summary Jurisdiction Act, 1879, it appears that an application under this sub-section must be made in open court as defined by that section, and, in most cases, a summons will be necessary. Notice must also be given to the local authority. See sub-section (4), *infra*.

(b) These works may be required under section 33 (3), *ante*, p. 620.

(c) See section 38 (5), *ante*, p. 625.

(d) The applicant is an owner other than the owner who has been proceeded against in the first instance, who is generally the owner in receipt of the rent. See the note to the preceding sub-section.

(3.) A court of summary jurisdiction may in any case by order enlarge the time allowed under any order for the execution of any works, or the demolition of a building, or the time within which a claim may be made to retain the site of a building.

See section 33 (4); section 34 (1); section 38 (5), *ante*, pp. 621, 625.

(4.) Before an order is made under this section, notice of the application shall be given to the local authority.

Remedies of owner for breach of covenant, &c. not to be prejudiced.

48. Nothing in this part of this Act shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a local authority under this part of this Act; and if any owner is obliged to take possession of any dwelling-house in order to comply

with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession. Section 48.

This section is a re-enactment of 31 & 32 Vict. c. 130, s. 22. Its object is to preserve to a freeholder or lessor his remedies against tenants or lessees on repairing covenants, notwithstanding proceedings under this part of the Act for closing or demolishing the demised premises, or notwithstanding that the freeholder or owner may have intervened under section 47 (2), or otherwise, under this part of the Act.

49. (1.) Where the owner of any dwelling-house and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the residence or place of business is within the district of such local authority, to serve any notice by this part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business. Service of notices.

This section is a re-enactment of 31 & 32 Vict. c. 130, ss. 15, 16.

As to the authentication of notice, see section 86 (2), *post*, p. 653.

A notice in "writing" may be partly written and partly printed, lithographed, &c. See 52 & 53 Vict. c. 63, s. 20.

(2.) Where the owner of the dwelling-house or his residence or place of business is not known to, and after diligent inquiry cannot be found by, the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3.) Notice served upon the agent of the owner shall be deemed notice to the owner.

In the case of *Ex parte Pilgrove*, "Times," 27th May, 1892, service on the son of the owner, who managed the property for the owner, was held sufficient.

50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description. Description of owner in proceedings.

This provision resembles that contained in section 267 of the Public Health Act, 1875, *ante*, p. 359. If the owner is known there is no reason why his name should not be inserted.

51. (1.) If any person, being the occupier of any dwelling-house, prevents the owner thereof, or being the owner or occupier of any dwelling-house, prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things Penalty for preventing execution of Act.

Section 51. requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act.

This section re-enacts 31 & 32 Vict. c. 130, s. 36.

As to the meaning of the term "court of summary jurisdiction," see the note to section 47, *ante*, p. 638.

The order must be made on complaint, and, apparently, the defendant must be summoned.

(2.) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine.

As to the recovery of the fine, see section 90, *post*, p. 654.

The proviso seems to contemplate a case where an order has been made on an owner, but the subsequent failure to comply with the order is not attributable to the owner, but to the occupier.

Report to
local autho-
rity by county
medical
officer.
45 & 46 Vict.
c. 50.

52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part of this Act, have the like effect as a representation from the medical officer of health of the district.

This section seems to imply that the medical officer of a county council appointed under the Local Government Act, 1888, s. 17, *ante*, p. 501, may make a representation to his council with reference to unhealthy houses in the county, and not in any borough. If he does so the council must forward the representation to the local authority, who must thereupon take proceedings upon it under section 32, *ante*, p. 169, as if it were a representation made to them by their own medical officer.

PART III.

WORKING CLASS LODGING-HOUSES.(a)

Adoption of Part III.

Definition of
purposes of
Labouring
Classes Lodg-
ing-Houses
Acts.

53. (1.) The expression "lodging-houses for the working classes," when used in this part of this Act, shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

(a) This part of the Act to some extent reproduces the Labouring Classes Lodging-Houses Acts (14 & 15 Vict. c. 34; 29 & 30 Vict. c. 28; 30 & 31 Vict. c. 28), as amended by 48 & 49 Vict. c. 72.

(2.) The expression "cottage" in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds.

The expression "estimated annual value" is an unusual one. Annual value is generally the same as rateable value. See *Dobbs v. Grand Junction Waterworks*

Company, 9 App. Cas. 49; 53 L. J. Q. B. 50; 49 L. T. (N.S.) 541; 32 W. R. 433; 48 J. P. 5.

Note to
Section 53.

54. This part of this Act may be adopted in the several districts mentioned in the First Schedule to this Act by the local authorities in that behalf in that schedule mentioned: Provided that in the case of any rural sanitary district in England, the adoption shall be only after such certificate and such delay as hereinafter mentioned.

Adoption of
this part of
Act.

This part of the Act is not in force in any district until it is adopted. Except in the case of rural sanitary authorities, as to whom see the next section, no provision is made with reference to the mode of adoption. It appears only to be necessary in the case of an urban authority that a resolution should be passed formally adopting this part of the Act.

55. (1.) A rural sanitary authority in any district desiring to adopt this part of this Act may apply to the county council of the county in which the area hereinafter mentioned is wholly or as to the larger part thereof in extent situate for the certificate required for such adoption, and shall specify in such application the area in which they consider that accommodation is necessary for the housing of the working classes, and thereupon the county council shall direct a local inquiry to be held by a member of the council, or any officer or person appointed by the council for the purpose, and if after such local inquiry the person holding the inquiry certifies that accommodation is necessary in such area for the housing of the working classes, and that there is no probability that such accommodation will be provided without the execution of this part of this Act, and that having regard to the liability which will be incurred by the rates, it is, under all the circumstances, prudent for the said authority to undertake the provision of the said accommodation under the powers of this part of this Act, the county council may, if they think fit, publish that certificate in one or more local newspapers circulating in the district, and thereupon the sanitary authority may adopt this part of this Act: Provided that—

Provisions in
case of adop-
tion by rural
sanitary
authority.(a)

- (a.) Unless the county council state in publishing such certificate that, by reason of the date of the next ordinary election of members of such authority or otherwise, an emergency renders it necessary to adopt this part of this Act immediately, such adoption in pursuance of the certificate shall not take place before the ordinary election of members of such authority which is held next after the date of the local inquiry;(b) and
- (b.) After the end of twelve months from the date of the certificate, this part of this Act shall not be adopted without a fresh certificate;(c) and
- (c.) No land shall be acquired, nor buildings erected under this part of this Act outside of the area mentioned in the certificate except after a fresh application, inquiry, and certificate.(d)

(a) Under the corresponding provisions of 48 & 49 Vict. c. 72, s. 1, the application by a rural authority to adopt the Labouring Classes Lodging-Houses Acts was made to the Local Government Board, who thereupon held a local inquiry by one of their inspectors. Under the above section the application must be made to the county council, who will hold a local inquiry by one of their members or officers, or some other person appointed for the purpose. The certificate was formerly published in the *London Gazette*; now it is to be published in one or more local newspapers.

Note to
Section 55.

(b) The election of members of rural sanitary authorities takes place in March and April of each year, except where the members retire together at the end of every third year under section 23 (6) of the Local Government Act, 1894, *post*. In order that the ratepayers may have a voice in determining whether this part of the Act should be adopted, the rural authority must wait until after the ordinary election subsequent to the advertisement of the certificate. But if this would involve a long delay, or if, for any other reason, the county council think the adoption should take place at once, they may insert a statement to that effect in the certificate, and thereupon the rural authority may forthwith adopt this part of the Act without waiting for the ordinary election.

(c) The rural authority are not bound to adopt this part of the Act even after the certificate, but if they fail to do so for a year, they must apply again *de novo* for another certificate.

(d) As to the acquisition of land and the erection of buildings, see sections 56—60, *post*. The certificate must specify the area, and if it is desired to acquire land or erect buildings outside that area, another certificate must be applied for and obtained.

(2.) Where the rural sanitary authority think it just that the burden of the expenses of the execution of this part of this Act should be borne by some contributory place or places (a) only in their district, instead of by the whole of their district, the authority may, in their application to the county council, request permission to limit the burden of such expenses to such contributory place or places, and thereupon the justice of such limitation shall be inquired into at the local inquiry, (b) and the county council, if satisfied after the local inquiry that the circumstances of the contributory place or places and of the rest of the district render such limitation just, may make an order to that effect, (c) and thereupon the expenses of the execution of this part of this Act in the area mentioned in the order shall be borne by the contributory place or places named in the order instead of by the whole district. The provisions of this enactment with respect to the burden of the expenses shall apply upon every application for a fresh certificate.

(a) A contributory place is the area within which special expenses, *i.e.*, expenses which fall upon part only of the district are raised. It is in general a parish comprised in the rural district. See the Public Health Act, 1875, s. 229, *ante*, p. 308. The necessity for lodging-houses as defined by section 53, *ante*, p. 640, may exist only in a village in the rural district, and it may be right to make the expense fall entirely or partially on the parish or other area benefited instead of the whole district.

(b) As to this inquiry, see sub-section (1), note (a), *ante*, p. 641.

(c) This is an order of the county council made after the certificate and independently of it, though the matter must, apparently, be reported upon to the county council by the person who holds the local inquiry.

(3.) Any expenses incurred by a county council in holding a local inquiry under this part of this Act shall be a simple contract debt to the council from the rural sanitary authority, and shall be defrayed as part of the expenses of such authority in the execution of this part of this Act.

As to the payment of expenses, see section 65, *post*, p. 645.

Execution of Part III. by Local Authority.

Powers of
local autho-
rity.

56. Where this part of this Act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the same powers, whether of contract or otherwise, as in the execution of their duties in the case of

the London County Council under the Metropolis Management Act, Section 56. 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

18 & 19 Vict.
c. 120.
38 & 39 Vict.
c. 55.

Under 18 & 19 Vict. c. 120, s. 149, the London County Council may enter into all such contracts as they may think necessary for carrying that Act into execution.

The sections of the Public Health Act, 1875, relating to contracts by sanitary authorities, are sections 173—75, *ante*, p. 238.

57. (1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall, for the purposes of this part of this Act, extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

Acquisition
of land.
38 & 39 Vict.
c. 55.

See sections 175—78 of the Public Health Act, 1875, *ante*, p. 244. It should be observed that under these sections land cannot be acquired compulsorily, except by virtue of a provisional order of the Local Government Board, or in the case of the London authorities, of the Secretary of State.

Where the local authority acquire land under this section, they must make good any deficiency in the rates under section 133 of the Lands Clauses Act, 1845, *post*. *St. Leonard's, Shoreditch (Vestry of) v. London County Council*, *ante*, p. 612.

(2.) The local authority may, if they think fit, contract for the purchase or lease of any lodging-houses for the working classes already or hereafter to be built and provided.

(3.) The local authority may, if not a rural sanitary authority, with the consent of the Local Government Board, and if a rural sanitary authority, with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this Act, any lodging-houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

The two preceding sub-sections, and the next section, are re-enactments of 14 & 15 Vict. c. 34, ss. 35, 38.

58. The trustees of any lodging-houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging-houses to the local authority of the district, or make over to them the management thereof.

Local authority may purchase existing lodging-houses.

See the note to the last preceding sub-section.

59. The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging-houses for the working classes, and convert any buildings into lodging-houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Erection of lodging-houses.

This section re-enacts 14 & 15 Vict. c. 34, s. 36.

**Note to
Section 59.**

Under this section the local authority may not only provide lodging-houses, which include cottages and gardens (see section 53, *ante*, p. 640), but they may furnish them when provided.

Sale and
exchange of
lands.

60. A local authority may, if not a rural sanitary authority, with the consent of the Local Government Board, and if a rural sanitary authority, with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange.

This is a re-enactment of 14 & 15 Vict. c. 34, s. 42.

Management of Lodging-houses.

Management
to be vested
in local
authority.

61. (1.) The general management, regulation, and control of the lodging-houses established or acquired by a local authority under this part of this Act shall be vested in and exercised by the local authority.

(2.) The local authority may make such reasonable charges for the tenancy or occupation of the lodging-houses provided under this part of this Act as they may determine by regulations.

Regulations must not be confounded with bye-laws. The latter require confirmation (see section 84, *post*, p. 653); the former do not, and they may be altered from time to time without the consent or approval of any superior authority.

Bye-laws for
regulation of
lodging-
houses.

62. (1.) The local authority may make bye-laws for the management, use, and regulation of the lodging-houses, and it shall be obligatory on the local authority, except in the case of a lodging-house which is occupied as a separate dwelling, by such bye-laws to make sufficient provision for the several purposes expressed in the Sixth Schedule to this Act.

As to the making of bye-laws, see section 84, *post*, p. 653. Bye-laws must be made for the purposes mentioned in Schedule VI., *post*, except in the case of a lodging-house occupied as a separate dwelling, such as a cottage (see section 53, *ante*, p. 640). It is optional with the local authority to make bye-laws for other purposes of management, &c.

(2.) A printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging-houses shall be put up, and at all times kept in every room therein.

The copy or abstract must be hung up in every room, not merely in every separate tenement.

Disqualifica-
tion of
tenants of
lodging-
houses on
receiving
parochial
relief.

63. Any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging-house, or any part of such a lodging-house, receives any relief under the Acts relating to the relief of the poor other than relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

This is a re-enactment of 14 & 15 Vict. c. 34, s. 49. Its object appears to be to prevent the occupation of a lodging-house to be in any way associated with the receipt of relief. It will, apparently, be the duty of the local authority to turn out any tenant who receives relief. Relief to a wife, or a child under sixteen, is relief to the husband or father, as the case may be. 4 & 5 Will. 4, c. 76, s. 56.

64. Whenever any lodging-houses established for seven years or upwards under the authority of this part of this Act are determined by the local authority to be unnecessary or too expensive to be kept up, the local authority may, if not a rural sanitary authority, with the consent of the Local Government Board, and if a rural sanitary authority, with the consent of the county council of the county in which the lodging-houses are situate, sell the same for the best price that can reasonably be obtained for the same, and the local authority shall convey the same accordingly.

Section 64.
When lodg-
ing-houses
are considered
too expensive
they may be
sold.

This section replaces 14 & 15 Vict. c. 34, s. 49.

If lodging-houses are once established, they must be kept up for at least seven years. After the seven years they may be discontinued if they turn out to be unnecessary or too expensive.

Expenses and Borrowing of Local Authorities.

65. All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed—

Payment of
expenses.

- (i.) In the case of an authority in the administrative county of London, out of the Dwelling-House Improvement Fund under Part I. of this Act ;(a)
- (ii.) In the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Acts ;(b) and
- (iii.) In the case of a rural sanitary authority, as special expenses incurred in the execution of the Public Health Acts, and, save where the burden of such expenses is, by order of the county council who published the certificate, to be borne by one contributory place only, shall be deemed to be incurred for the common benefit of all the contributory places liable to bear such expenses.(c)

Provided that if, on the application of the rural sanitary authority, it is so declared at the time of the publication of the certificate(d) by the county council who published the same, then the said expenses(e) of the rural sanitary authority shall be defrayed as general expenses of the said authority in the execution of the Public Health Acts, and if such expenses are not to be borne by the whole of the district, shall be paid out of a common fund to be raised in manner provided by the Public Health Act, 1875, but as if the contributory places which are to bear those expenses constituted the whole of the district.(f)

(a) As to this fund, see section 24, *ante*, p. 614.

(b) See sections 207—8 of the Public Health Act, 1875, *ante*, p. 276.

(c) The effect of this provision is as follows :—General expenses of a rural authority are payable out of the poor rate, which is levied on houses and land equally. Special expenses, however, are levied by means of a separate rate, and for the purposes of that rate, tithes, land, railway, and canal property are assessed at one-fourth only of the rate in the pound, payable in respect of houses and other property. See the provisions of section 230 of the Public Health Act, *ante*, p. 310. These special expenses are to be deemed as incurred for all contributory places in the district, unless the county council order them to be borne by some only of such contributory places.

(d) As to the certificate here referred to, see section 55, *ante*, p. 641.

(e) See note (c), *supra*.

(f) Even if the expenses are ordered to be general expenses, the burden of them may be confined to part only of the district. In such a case, a common fund must be formed to which each contributory place will contribute out of the poor rate a sum proportionate to its rateable value. See section 229 of the Public Health Act, 1875, *ante*, p. 303.

Section 66.

Borrowing
for purposes
of Part III.

66. The London County Council and the Commissioners of Sewers may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for the purposes of Part I. of this Act, and a sanitary authority may borrow for the purpose of the execution of this part of this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses.

As to the power of the London County Council and the Commissioners of Sewers to borrow for the purposes of Part I., see section 25, *ante*, p. 615.

A sanitary authority may borrow in manner provided by the Public Health Act, 1875, ss. 233—243, *ante*, p. 314.

Loans to and Powers of Companies, Societies, and Individuals.

Loans by
Public Works
Commis-
sioners.

67. (1.) In addition to the powers conferred upon them by any other enactment, (a) the Public Works Loan Commissioners may, out of the funds at their disposal, advance on loan to any such body or proprietor as hereinafter mentioned ; namely,—

(a.) Any railway company, or dock or harbour company, or any other company, society, or association established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (b) (in the course of whose business, or in the discharge of whose duties, persons of the working classes are employed) ;

(b.) Any private person entitled to any land for an estate in fee simple, or for any term of years absolute whereof not less than fifty years shall, for the time being, remain unexpired ;

and any such body or proprietor may borrow from the Public Works Loan Commissioners such money as may be required for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes. (c)

(a) The Commissioners might, perhaps, have lent money for the purposes of this part of the Act under the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89, s. 9, *post*).

(b) As to the power of a railway or trading company to erect dwellings, &c., see section 68, *post*.

(c) As to the rate of interest on such loans, see section 83, *post*, p. 652.

38 & 39 Vict.
c. 89.

(2.) Such loans shall be made in manner provided by the Public Works Loans Act, 1875, (a) subject to the following provisions :—

(a.) Any such advance may be made whether the body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act ; but nothing in this Act shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.

(b.) The period for the repayment of the sums advanced shall not exceed forty years.

(c.) No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple, or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance.

(d.) The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged ; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advanced do not at any time exceed the amount aforesaid ; and a mortgage may be accordingly made to secure such advances so to be made from time to time. Section 67.

(a) See this Act, *post*.

(b) The whole of this sub-section is taken from 29 Vict. c. 28, s. 4.

(3.) For the purpose of constructing or improving or facilitating or encouraging the construction or improvement of dwellings for the working classes, every such body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this part of this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

This clause creates an exception to the Mortmain Act (51 & 52 Vict. c. 42), s. 1. See, also, the provisions of 53 & 54 Vict. c. 16, in the Appendix. The provision that the body shall be incorporated for one purpose only is singular.

68. Any railway company, or dock or harbour company, or any other company, society, or association, established for trading or manufacturing purposes, in the course of whose business, or in the discharge of whose duties, persons of the working classes are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorised at any time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them. Powers to companies.

This provision is a re-enactment of 29 Vict. c. 28, s. 8. But for it, a company might not have had power to erect dwellings under this part of the Act. Cottages built by the company for their workmen are not exempt from bye-laws as to new buildings by reason of the last provision in section 157 of the Public Health Act, 1875. *Manchester, Sheffield, and Lincolnshire Railway Company v. Barnsley Union*, *ante*, p. 217. As to the power of the company to borrow, see section 67 (2), *ante*, p. 646.

69. Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging-houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit. Power to water and gas companies to supply water and gas to lodging-houses.

This is a re-enactment of 14 & 15 Vict. c. 34, s. 39. It will enable a local authority who supply water or gas, to give a gratuitous supply to any lodging-houses provided by them, or by any other body or person under this part of the Act.

70. A lodging-house established in any district under this part of this Act shall be, at all times, open to the inspection of the local Inspection of lodging-houses.

Section 70. authority of that district, or of any officer from time to time authorised by such authority.

Application
of penalties.

71. Any fine for the breach of any bye-law under this part of this Act shall be paid to the credit of the funds out of which the expenses of this part of this Act are defrayed.

As to the fund out of which these expenses are to be defrayed, see section 65, *ante*, p. 645.

PART IV.

SUPPLEMENTAL.

Limit of area
to be dealt
with on
official repre-
sentation.

72. Where an official representation made to the London County Council in pursuance of Part I. of this Act relates to not more than ten houses, the London County Council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that part of this Act.

This section applies only to London. An official representation under Part I. is made under section 5, *ante*, p. 602. That under Part II. is made under sections 30 and 31, *ante*, p. 618.

This section and the next one are amendments of 48 & 49 Vict. c. 75, s. 5.

Provisions as
to parts of
Act under
which reports
are to be
dealt with in
county of
London.

73. (1.) In either of the following cases :—

(a.) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so dangerous or injurious to health, as to be unfit for human habitation, (a) or that the pulling down of any obstructive buildings would be expedient, (b) and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act ; or

(b.) Where an official representation as mentioned in Part I. of this Act has been made to the London County Council (c) in relation to any houses, courts, or alleys within a certain area, and that council resolve that the case of such houses, courts, or alleys is not of general importance to the county of London, and should be dealt with under Part II. of this Act ;

such local authority or council may submit such resolution to a Secretary of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, (d) and such arbitrator shall hold such inquiry, and report to the Secretary of State, as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this Act, the London

County Council ought to make a contribution in respect of the expense of dealing with the case.(e) Section 73.

- (a) Such a representation is made under section 30, *ante*, p. 618.
- (b) As to obstructive buildings, see section 38, *ante*, p. 624.
- (c) This official representation is made under section 5, *ante*, p. 602.
- (d) As to local inquiries, see section 85, *post*, p. 653.
- (e) As to this contribution, see section 46 (7), *ante*, p. 637.

(2.) The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

The medical officer will accordingly report under section 5, or under section 30, according as the decision is to proceed under Part I. or Part II.

74. (1.) The Settled Land Act, 1882, shall be amended as follows :—

- (a.) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.(b)
- (b.) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall in addition to cottages for labourers, farm servants, and artisans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court, is not injurious to the estate.(c)

Amendment of 45 & 46 Vict. c. 38, as regards erection of buildings for working classes.(a)

(a) This section is simply a re-enactment of 48 & 49 Vict. c. 72, s. 11.

(b) The Settled Land Act, 1882, s. 3, enabled a tenant for life to sell or exchange any settled land. Every sale, however, had to be made at the best price that could reasonably be obtained, and every such exchange for the best consideration in land, or in land and money, that could reasonably be obtained (section 4). By section 6, a tenant for life was empowered to make building leases for ninety-nine years, mining leases for sixty years, and other leases for twenty-one years. By section 7, such leases were to reserve the best rent that could reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case. The text relaxes these requirements in the case of sales, exchanges, and leases by tenants for life when the lands, which are the subject of such sale, &c., are sold, exchanged, or leased for the purposes of the Act. In such cases it is not the best price or rent which could be obtained, but the best price or rent which could be obtained having regard to the object of the sale, &c., which must be secured by the tenant for life.

(c) The Settled Land Act, 1883, s. 85, contains a long list of improvements authorised to be made by the Act, and to be paid for out of the capital money arising out of the sale of land under the Act, &c. Of these improvements No. X. consists of "cottages for labourers, farm servants, and artisans employed on the settled land or not." This provision is now extended as stated in the text.

By section 18 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), the provisions of section 11 of the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), and of any enactment which may be substituted therefor (*i.e.*, the text), shall have effect as if the expression "working classes" included all classes of persons who earn

Note to Section 74. their livelihood by wages or salaries ; provided that this section shall apply only to buildings of a rateable value not exceeding 100*l.* per annum.

(2.) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as, having regard to the said purpose, and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

This will apply not only to a municipal corporation, but also to corporate bodies capable of holding lands, such as colleges, hospitals, &c. Without the provision in the text, these bodies, holding, as they do, land upon trust, could not have sold except at the best market price.

Condition to be implied on letting houses for the working classes.

32 & 33 Vict. c. 43.

75. In any contract made after the fourteenth day of August, one thousand eight hundred and eighty-five, for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is, at the commencement of the holding, in all respects reasonably fit for human habitation. In this section the expression "letting for habitation by persons of the working classes" means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds.

The general rule of law is, that there is no implied covenant by the lessor of a house that is reasonably fit for habitation. *Hart v. Windsor*, 12 M. & W. 68 ; *Sutton v. Temple*, *ib.* 52 ; *Keates v. Earl Cadogan*, 10 C. B. 591 ; *Murray Bartram v. Aldous*, 2 T. L. R. 237. If, however, the contract be induced by an express undertaking that the drains are in order, specific performance will not be granted. *Tofield v. Roberts*, 10 T. L. R. 437. And the general rule does not apply to a furnished house. It is an implied condition in the letting of a furnished house that it is reasonably fit for habitation ; if it be not, *e.g.*, if it is greatly infested with bugs, the tenant may quit without notice, and an action will not lie for use and occupation. *Smith v. Marrable*, 11 M. & W. 5 ; *Campbell v. Lord Wenlock*, 4 F. & F. 717. The defendant agreed to rent the plaintiff's furnished house for a term of three months from the 7th of May, but having, at the beginning of the intended tenancy, discovered that the house was, owing to defective drainage, unfit for habitation refused to occupy. The plaintiff repaired the drains, and on the 26th May tendered the house in a wholesome condition to the defendant, who refused to occupy or pay any rent. The plaintiff having sued for the rent and for use and occupation, it was held that the state of the house at the beginning of the intended tenancy entitled the defendant to rescind the contract, and that he was not liable for the rent or for the use and occupation. *Wilson v. Finch Hatton*, 2 Ex. D. 336 ; 46 L. J. Ex. 489 ; 36 L. T. (N.S.) 473 ; 25 W. R. 537 ; 41 J. P. 583. And see, on the same point, *Harrison v. Malet*, 3 T. L. R. 58 ; *Bunn v. Harrison*, *ib.* 146 ; *Charsley v. Jones*, 53 J. P. 280 ; 5 T. L. R. 412. One who has agreed to take a furnished house is not bound to fulfil his contract if the house be infected with measles at the date fixed for the commencement of the tenancy. If in such a case the lessor sue for rent, he must show, to entitle him to succeed, that the house was, in fact, in a fit state for human habitation at the date fixed for the commencement of the term, notwithstanding a previous intimation by the tenant of his intention to repudiate the contract. *Bird v. Lord Greville*, 1 C. & E. 317 (per FIELD, J.) ; *Dawson v. Clementson*, 1 T. L. R. 295 ; *Harrison v. Malet*, 3 T. L. R. 58. But a tenant is not justified in determining a tenancy of a furnished house because, during the term, a portion of the plastering of the ceilings (which were cracked and fractured at the commencement of the tenancy) fell in one room, and the plastering of the ceilings in other rooms was unsound and liable to fall. On a letting of a furnished house, the implied term that it shall be fit for human habitation only applies to the condition of the

premises at the commencement of the tenancy. *Maclean v. Corrie*, 2 T. L. R. 361 (per STEPHEN, J.); *Sarson v. Roberts*, [1895], 2 Q. B. 395; 59 J. P. 451; 11 T. L. R. 515. Note to
Section 75.

It will be seen that the provision in the text creates an implied warranty similar to that now existing in the case of furnished houses. It has been held that a tenant has, under this section, a right to sue his landlord for damages for injuries caused by the premises not being reasonably fit for human habitation, owing to any defective state of repair. *Walker v. Hobbs*, 23 Q. B. D. 458; 59 L. J. Q. B. 93; 61 L. T. (n.s.) 688; 38 W. R. 63; 54 J. P. 199; 5 T. L. R. 640.

When the above section was first introduced into Parliament, it was general, and applied to all leases and lettings of dwelling-houses, irrespective of value. As it now stands, however, it applies only to houses or parts of houses let at the rents mentioned in 32 & 33 Vict. c. 41, s. 3, viz. : in the metropolis (inclusive of the City of London), at a rent not exceeding 20l.; in Liverpool, 13l.; in Manchester and Birmingham, 10l.; and elsewhere, 8l. This limitation seems to have been lost sight of in *Walker v. Hobbs*, *supra*.

76. (1.) The London County Council may, with the consent of a Secretary of State, at any time appoint one or more legally qualified practitioner or practitioners, with such remuneration as they think fit, for the purpose of carrying into effect any part of this Act. Medical officer of health in county of London.

The London County Council have, like every other county council, power to appoint a medical officer of health under section 17 of the Local Government Act, 1888, *ante*, p. 501. Under this section, they may appoint one or more medical officers, whose duties will be limited to carrying into effect any part of this Act.

As to the meaning of the term "legally qualified medical practitioner," see the note to the Local Government Act, 1888, s. 18, *ante*, p. 501.

(2.) Any medical officer of health appointed by the London County Council, and any officer appointed under this section by the London County Council, shall be deemed to be a medical officer of health of a local authority within the meaning of this Act.

As to the meaning of the term "local authority," see section 92, *post*, p. 654. Such a medical officer may act under Part II. of this Act, though, for purposes of that part, the London County Council may not be the local authority.

77. Any person authorised by the local authority may at all reasonable times of the day, on giving twenty-four hours' notice in writing to the occupier of his intention so to do, enter any dwelling-house, premises, or building which the local authority are authorised to purchase compulsorily under Part I. or Part II. of this Act, for the purpose of surveying and valuing such dwelling-house, premises, or building. Power to local authority to enter and value premises.

78. Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act, is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling down the building, may make to the said tenant a reasonable allowance on account of his expenses in removing. Compensation to tenants for expense of removal.

The closing order above mentioned is an order under section 32, which provides for compensation to tenants displaced by it. See *ante*, p. 619.

79. (1.) Anything which, under Part I. or Part II. of this Act, is authorised or required to be done by or to a medical officer of health, Duties of medical officer of health,



Section 79. may be done by or to any person authorised to act temporarily as such medical officer of health.

In the case of the illness or incapacity of a medical officer, a local authority may appoint and pay a deputy, with the consent of the Local Government Board. See section 191 of the Public Health Act, 1875, *ante*, p. 263. Such a deputy might, therefore, exercise the powers of a medical officer under this Act.

(2.) Every representation made by a medical officer of health in pursuance of this Act shall be in writing.

"Writing" includes a printed or lithographed document. See 52 & 53 Vict. c. 63, s. 20.

Accounts and audit.

80. (1.) Separate accounts shall be kept by the local authority and their officers of their receipts and expenditure under each part of this Act.

(2.) Such accounts shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of the local authority are, for the time being, required to be audited by law.

The accounts of a county council will, therefore, be audited by the district auditor under section 71 of the Local Government Act, 1888, whilst those of an urban or rural sanitary authority will be audited in manner provided by the Public Health Act, 1875, ss. 246—253, *ante*, p. 325.

As to the audit of the accounts of district boards and vestries in the metropolis, see 18 & 19 Vict. c. 120, s. 195; 25 & 26 Vict. c. 102, s. 38.

Power of local authority to appoint committees.

81. For the purposes of this Act, a local authority acting under this Act may appoint out of their own number so many persons as they may think fit, for any purposes of this Act which, in the opinion of such authority, would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

The acts of such a committee do not appear to require confirmation by the local authority, unless this condition is imposed by the local authority when the committee is constituted.

Application of purchase money.

82. Where a local authority sell any land acquired by them for any of the purposes of this Act, the proceeds of the sale shall be applied for any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board.

Rates of loans by Public Works Loan Commissioners.
38 & 39 Vict. c. 89.

83. Any loan advanced by the Public Works Loan Commissioners in pursuance of this Act, or for labourers' dwellings in pursuance of the Public Works Loans Act, 1875, or any Act amending the same, shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may, from time to time, authorise as being, in their opinion, sufficient to enable such loans to be made without loss to the Exchequer.

A similar provision was contained in 48 & 49 Vict. c. 72, s. 6, which was not, however to continue in force after the 31st December, 1888. The section was continued

in force until 31st December, 1891, by 51 & 52 Vict. c. 39, s. 3. The above section contains no limitation in point of time.

**Note to
Section 83.**

84. With respect to bye-laws authorised by this Act to be made—

- (a.) Sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such bye-laws are made by the London County Council, or any nuisance authority in the administrative county of London; and
- (b.) The provisions of the Public Health Act, 1875, relating to bye-laws, where such bye-laws are made by a sanitary authority,

Application of certain provisions as to bye-laws. 18 & 19 Vict. c. 120.

38 & 39 Vict. c. 55.

shall apply to such bye-laws, and a fine or penalty under any such bye-law may be recovered on summary conviction.

The 18 & 19 Vict. c. 120, s. 202, empowers any district board or vestry to make bye-laws, which must be confirmed at a meeting subsequent to that at which they were made and approved by a Secretary of State. Section 203 provides for the publication and evidence of such bye-laws.

The provisions of the Public Health Act, 1875, as to bye-laws, are contained in sections 182—187, *ante*, p. 256. Bye-laws of a sanitary authority must be confirmed by the Local Government Board.

As to the recovery of penalties, see section 90, *post*.

85. (1.) For the purposes of the execution of their duties under this Act, the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority, engaged in the inquiry not exceeding three guineas a day, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them, and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

Local inquiries.

(2.) Sections two hundred and ninety-three to two hundred and ninety-six, and section two hundred and ninety-eight of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board, or any local inquiry which that Board cause to be held in pursuance of any part of this Act.

See these sections and the notes thereto, pp. 389, 393.

86. (1.) An order in writing made by a local authority under this Act shall be under their seal, and authenticated by the signature of their clerk or his lawful deputy.

Orders, notices, &c.

The distinction between an order and a notice or demand which is provided for by the next sub-section, should be noticed. An order must be under seal: a notice need not.

(2.) A notice, demand, or other written document proceeding from the local authority under this Act, shall be signed by their clerk or his lawful deputy.

Section 87. **87.** Any notice, summons, writ, or other proceeding at law or otherwise, required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there.

Prohibition on persons interested voting as members of local authority. **88.** (1.) A person shall not vote as member of a local authority or county council, or any committee thereof, upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2.) If any person votes in contravention of this section, he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

As to the recovery of this fine, see section 90, *post*. The information may be laid by any person.

Penalty for obstructing the execution of Act. **89.** Where any person obstructs the medical officer of health, or any officer of the local authority, or of the confirming authority, mentioned in Part I. of this Act, in the performance of anything which such officer or authority is by this Act required or authorised to do, such person shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

As to the recovery of this penalty, see the next section.

Punishment of offences and recovery of fines. **90.** Offences under this Act punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts.

The Summary Jurisdiction Acts are the 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49; and any Act amending those Acts, or either of them. (Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 13 (7).)

The fines will be recovered in the metropolis before a police magistrate; elsewhere, before a stipendiary magistrate or two justices.

Powers of Act to be cumulative. **91.** All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed, and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that a local authority shall not, by reason of any local Act relating to a place within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under any part of this Act.

Compare 53 & 54 Vict. c. 59, s. 10, *ante*, p. 564, and section 341 of the Public Health Act, 1875, *ante*, p. 423.

Definition of local authority, districts, local rate. **92.** In this Act, unless the context otherwise requires, "district," "local authority," and "local rate," mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule

to this Act, but in Part III. of this Act, and in reference to any power given by that part, or any act to be done in pursuance thereof, shall mean such area, bodies of persons, and rate only in cases where that part of this Act is adopted or being adopted. Section 92.

93. In this Act, unless the context otherwise requires—

The expression “land” includes any right over land :

The expression “sanitary district” means the district of a sanitary authority :

The expression “sanitary authority” means an urban sanitary authority or a rural sanitary authority :

The expressions “urban sanitary authority” and “rural sanitary authority” and “contributory place,” have respectively the same meanings as in the Public Health Act, 1875 :^(a)

The expression “superior court” means the Supreme Court :

The expression “county of London,” except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

Definitions :

“Land.”

“Sanitary district.”

“Sanitary authority.”

“Urban and rural sanitary authority ;” “contributory place.”

“Superior court.”

“County of London.”

(a) See *ante*, p. 24.

PART V.

APPLICATION OF ACT TO SCOTLAND.

In the application of this Act to Scotland, the following provisions shall have effect,—

94. (1.) A reference to any sections of the Lands Clauses Consolidation Act, 1845, shall be construed to mean a reference to the corresponding sections of the Lands Clauses Consolidation (Scotland) Act, 1845. Modification as respects reference to Scotch Acts.

(2.) Where a dispute under this Act is to be settled by two justices in manner provided by the Lands Clauses Acts in cases where the compensation claimed in respect of lands does not exceed fifty pounds, such dispute shall be settled in Scotland by the sheriff in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in similar cases.

(3.) The Public Health (Scotland) Act, 1867, and the Acts amending the same, shall be substituted for the Public Health Acts, and in particular— 8 & 9 Vict. c. 19.
30 & 31 Vict. c. 101.

(a.) With respect to the purchase of land a reference to section ninety of the said Public Health (Scotland) Act, 1867, shall be substituted for a reference to sections one hundred and seventy-five to one hundred and seventy-eight of the Public Health Act, 1875 ;

(b.) Local inquiries by the Board of Supervision shall be held, under sections ten to thirteen of the Public Health (Scotland) Act, 1867, and local inquiries by the Secretary for Scotland under the Local Government (Scotland) Act, 1889, and the provisions of sub-section one of section eighty-five of this Act shall apply to such inquiries by the Board of Supervision : 52 & 53 Vict. c. 50.

Section 94. (c.) The provisions as to private improvement expenses and the defraying thereof shall not apply to Scotland; and the local authority shall be entitled to recover in a summary manner the amount apportioned to any building in respect of its increase in value by reason of the demolition of any obstructive building, from the owner or occupier thereof, according to their respective interests in such increase of value.

(4.) The Acts relating to nuisances mean, as respects any place in Scotland, the Public Health (Scotland) Act, 1867, and any Act amending the same, and the Local Government (Scotland) Act, 1889, and any local Act which contains any provisions with respect to nuisances in that place.

Modifications
as regards
legal pro-
ceedings in
Scotland.

95. (1.) A charging order under Part II. of this Act shall be recorded in the appropriate register of sasines.

(2.) Superior court means, in Scotland, the Court of Session, and where any order, certificate, or other act under this Act may be made a rule of a superior court, the Court of Session in Scotland may, on the application of the Lord Advocate, on behalf of the confirming authority, or on the application of any person interested, interpose their authority, to any such order, certificate, or act, and grant decree conform thereto upon which execution and diligence may proceed in common form.

(3.) An appeal from an order of a local authority under Part II. of this Act shall, in Scotland, be to the sheriff, and the same procedure shall apply as on an appeal from the sheriff substitute to the sheriff, but with the same provisos as apply to the appeal in England from the order of the local authority to a court of quarter sessions.

(4.) Offences under this Act punishable on summary conviction may be prosecuted and fines recovered before the sheriff or two justices, or in burghs before the magistrates, in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is hereby conferred on such sheriff or two justices, or any two magistrates of a burgh.

Miscellaneous
modifications.

96. (1.) This Act shall be read and construed as if for the expression "The Local Government Board," wherever it occurs therein, the expression "The Secretary for Scotland" were substituted, except that the provisions of this Act with respect to the adoption and execution of Part III. of this Act by a rural sanitary authority shall apply to the adoption and execution thereof by a local authority, being a district committee, and the Board of Supervision for the Relief of the Poor in Scotland shall be substituted in the said part for the county council.

(2.) The expenses incurred by a local authority under this Act may be defrayed in the same manner as general expenses under section ninety-four, sub-section two, of the Public Health (Scotland) Act, 1867, and money may be borrowed for the purposes of this Act in the same manner and subject to the same conditions, as nearly as may be, as money may be borrowed for the erection of hospitals under the Public Health (Scotland) Amendment Act, 1871: Provided that the assessment therefor shall be levied only within the parish or parishes in respect of which such expenses are incurred.

(3.) The *Edinburgh Gazette* shall be substituted for the *London Gazette*. Section 96.

(4.) The expression "medical officer of health" means medical officer.

(5.) The expression "person entitled to the first estate of freehold in" means owner of.

(6.) The expression "court of quarter sessions" means the sheriff.

(7.) The expression "urban sanitary authority" means the local authority under the Public Health (Scotland) Act, 1867, being a town council or police commissioners or trustees exercising the functions of police commissioners.

(8.) The expression "rural sanitary authority" means a district committee, or where a county has not been divided into districts under the Local Government (Scotland) Act, 1889, the county council.

(9.) The expression "contributory place," means a parish.

(10.) The expression "court of summary jurisdiction" means the sheriff or any two justices of the peace sitting in open court, or any magistrate or magistrates within the meaning of the Summary Jurisdiction Acts.

(11.) The expression "executors, administrators, or assigns" means heirs, executors, or assignees.

(12.) The expression "mortgage" means bond and disposition in security.

(13.) The reference to quit rents and other charges incident to tenure, and to tithe commutation rentcharge shall be read as applicable to feu duties, casualties, and teinds.

(14.) With respect to bye-laws authorised by this Act to be made, the provisions of the Public Health (Scotland) Act, 1867, relating to rules and regulations for common lodging-houses, shall apply to such bye-laws with the necessary variations, and a fine or penalty under any such bye-law may be recovered on summary conviction.

(15.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.

(16.) The provisions of Part II. of this Act with respect to the powers of county councils shall not apply to Scotland.

97. (1.) The superior of any lands and heritages may give notice of his right of superiority to the local authority, and thereupon the local authority shall give such superior notice of any proceedings taken by them in pursuance of Part II. of this Act in relation to such lands and heritages ;

Provision as to superior of lands for purpose of Part II.

(2.) If it appears to the sheriff, on the application of such superior, that default is being made in the execution of any works required to be executed on such lands and heritages in respect of which a closing order has been made, or in the demolition of a building on such lands and heritages, or in claiming to retain any site, in pursuance of Part II. of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the sheriff may make an order empowering the applicant forthwith to enter on the lands and

Section 97. heritages, and within the time fixed by the order to execute the said works, or to demolish the building, or to claim to retain the site, as the case may be ;

(3.) The sheriff may, in any case, by order, enlarge the time allowed under any order for the execution of any works, or the demolition of a building, or the time within which a claim may be made to retain the site of a building ;

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

PART VI.

APPLICATION OF ACT TO IRELAND.

Modification
in application
of Act to
Ireland.
41 & 42 Vict.
c. 52.

98. In the application of this Act to Ireland the following provisions shall have effect,—

- (1.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular the references in this Act to sections one hundred and seventy-five, one hundred and seventy-six, and one hundred and seventy-seven of the Public Health Act, 1875, shall be respectively taken to be references to sections two hundred and two, two hundred and three, and two hundred and four respectively, of the Public Health (Ireland) Act, 1878, and the reference to sections two hundred and ninety-three to two hundred and ninety-six, two hundred and ninety-eight of the Public Health Act, 1875, shall be taken to be a reference to sections two hundred and nine, two hundred and ten, two hundred and twelve, two hundred and thirteen, and two hundred and fifteen of the Public Health (Ireland) Act, 1878.
- (2.) The Acts relating to nuisances mean as respects any place in Ireland, the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place.
- (3.) The expression “quarter sessions” means, in towns and boroughs where there are separate quarter sessions, the quarter sessions of the said towns and boroughs, and in towns and boroughs where there are no separate quarter sessions, the quarter sessions of the division of the counties in which such towns or boroughs are situate.
- (4.) The provisions of section twenty-four of the Petty Sessions (Ireland) Act, 1851, respecting appeals from courts of summary jurisdiction authorised by that section, and any enactment amending the same, shall, in Ireland, apply to the case of appeals from an order of a local authority to a court of quarter sessions under Part II. of this Act, as if such order was an order of a court of summary jurisdiction, but with the same provisoes as apply under this Act in the case of such an appeal in England.

14 & 15 Vict.
c. 93.

- (5.) The Local Government Board for Ireland shall be substituted for the Local Government Board. **Section 98.**
- (6.) The Commissioners of Public Works in Ireland acting with the consent of the Treasury shall be substituted for the Public Works Loan Commissioners.
- (7.) The medical officer of health in Ireland shall include the medical superintendent officer of health appointed under the Public Health (Ireland) Act, 1878.
- (8.) The *Dublin Gazette* shall be substituted for the *London Gazette*.
- (9.) Every charging order under Part II. of this Act shall be registered in the office for registering deeds, conveyances, and wills in Ireland.
- (10.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.
- (11.) The accounts of the local authority under this Act shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of that authority as a sanitary authority are, for the time being, required to be audited by law.
- (12.) The consent of the Treasury shall, in Ireland, be substituted for the consent of the Local Government Board required under Part III. of this Act to the appropriation of land for lodging-houses, to the sale and exchange of land, and to the sale of lodging-houses when considered too expensive.

99. (1.) In a town, not being an urban sanitary district, Part III. of this Act may be adopted by any town commissioners for the time being existing, for the paving, lighting, or cleansing of that town under any public Act of Parliament, or any charter, and the Act, when adopted, shall be carried into execution by such town commissioners, and for that purpose they shall be deemed to be a local authority within the meaning of the said part. Adoption of Part III. of Act by town commissioners of small towns in Ireland.

(2.) Such commissioners shall give not less than twenty-eight nor more than forty-two days' public notice of their intention to take into consideration the propriety of adopting the said part of this Act, and of the time and place for holding the meeting when they will take it into consideration.

(3.) If at the meeting there is presented to the commissioners a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to rates made by such commissioners, requesting them to postpone the said consideration for a period of one year, then the consideration shall be so postponed, and shall be entered upon as soon after the expiration of the year as the commissioners think fit.

(4.) If the said part of this Act is adopted, the local rate shall be any rate which the commissioners have power to impose for the purpose of paving, lighting, cleansing, or otherwise improving the town, and such rate may, with the approval of the Treasury, be increased for the purpose.

(5.) The net income arising from any lodging-houses or dwellings provided by the commissioners in pursuance of the said part of this Act, after the payment of all out-goings, including the interest and instal-

Section 99. — ments of principal of any loan, shall be paid to the town commissioners' fund, or otherwise in aid of the rates which have been applied to the payment of the expenses.

Incorporation of sections 10 & 11 Vict. c. 16, for purposes of Part III. of Act.

100. Sections fifty-six to sixty-four, both inclusive, and sections ninety-nine to one hundred and three, both inclusive, of the Commissioners Clauses Act, 1847, shall be incorporated with Part III. of this Act, so far as regards any town commissioners, or any dock or harbour company or commissioners; and in the construction of the said sections for the purposes of the part of this Act with which they are so incorporated, the expression "commissioners" shall mean any such commissioners or company as aforesaid, and the expression "special Act" shall mean this Act.

Power of making bye-laws for labourers' dwellings in Ireland.

101. (1.) Any company, society, or association establishing lodging-houses in pursuance of Part III. of this Act shall have the same power of making bye-laws for the regulation of such lodging-houses as a local authority have under the said part.

(2.) Any bye-law made for the regulation of lodging-houses in pursuance of Part III. of this Act shall not be valid until approved by the Local Government Board, and a production of a copy of the bye-laws purporting to be sealed with the seal of the Local Government Board, and signed by the President, or by the Under Secretary to the Lord Lieutenant, or by the Vice-President, or by two other members of the Board both signing, shall be sufficient evidence of such approval in all courts of justice and elsewhere.

(3.) Where a bye-law has been so approved, any fine imposed by the same may be recovered before a court of summary jurisdiction; and one-half of any fine so recovered shall be paid to the informer, and the other half to the authority who made the bye-law, and shall be applied by them in aid of the expenses of the lodging-houses.

PART VII.

REPEAL AND TEMPORARY PROVISIONS.

Repeal of Acts.

102. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent in the third column of that schedule specified.

Provided that:—

- (1.) Where the Labouring Classes Lodging-Houses Acts, 1851 to 1885, have been adopted in any district, that adoption shall be deemed to be an adoption of Part III. of this Act, and this Act shall apply accordingly;
- (2.) Any officer appointed under any enactment hereby repealed shall continue and be deemed to be appointed under this Act;
- (3.) Any dwelling-houses acquired by the local authority under the Artizans Dwellings Acts, 1868 to 1885, and vested in them at the commencement of this Act, shall be held by such local authority as if they had been acquired under the provisions of Part III. of this Act, and any land or premises other than

dwelling-houses so acquired and held by them at the commencement of this Act shall be held as if the same had been acquired as a site of an obstructive building in pursuance of Part II. of this Act, but may, with the consent of the authority authorised by the said part of this Act to consent to the sale of land so acquired be appropriated for the purposes of Part III. of this Act. Section 102.

103. The provisions of this Act relating to compensation, to the power of the local authority to enter and value premises, to the compensation of tenants for expense of removal, shall be applicable in the case of all improvement schemes which have been confirmed by Act of Parliament during the session in which this Act is passed. Temporary provisions.

SCHEDULES.

FIRST SCHEDULE.

ENGLAND AND WALES.

Schedule 1.

Sections 54,
92.

District.	Local Authority.	Local Rate.
<i>Throughout Act.</i>		
Urban sanitary district - - -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health Acts are defrayed.
The city of London - - -	The Commissioners of Sewers.	The sewer rate and the consolidated rate levied by such Commissioners or either of such rates.
(1.) <i>For the purpose of Parts I. and III.</i>		
The county of London - - -	The County Council of London.	The county fund and the amount payable shall be deemed to be required for special county purposes.
(2.) <i>For the purposes of Part II.</i>		
A parish other than the parish of Woolwich mentioned in Schedule A. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.	The Vestry elected under the Metropolis Management Act, 1855.	The general rate leviable by such vestry or board under the Metropolis Management Act, 1855,
A district mentioned in Schedule B. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.	The Board of Works for the district elected under the Metropolis Management Act, 1855.	
Parish of Woolwich - - -	The local board of health -	The district fund and general district rate.

Schedule 1.

District.	Local authority.	Local Rate.
(3.) <i>For the purposes of Parts II and III.</i>		
Rural sanitary district - -	The rural sanitary authority.	The rate out of which the "general" or "special" expenses, as the case may be, of the execution of the Public Health Acts are defrayed.

SCOTLAND.

Throughout Act.

Districts under the Public Health (Scotland) Act, 1867, exclusive of parishes or parts thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The local authorities under the Public Health (Scotland) Act, 1867, in those districts.	The public health rate.
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Under Parts II and III.

Districts under the Public Health (Scotland) Act, 1867, as amended by the Local Government (Scotland) Act, 1889.	The local authorities under the Public Health (Scotland) Act, 1867, in those districts.	The public health rate.
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IRELAND.

Under Parts I and III.

Urban sanitary district - -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in these districts.
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Under Part II.

Urban sanitary district - -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.
Rural sanitary district - -	The rural sanitary authority.	The rate out of which the special expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.

Note.

In any case in the United Kingdom where an urban sanitary authority does not levy a borough rate or any general district rate, but is empowered by a local Act or Acts to borrow money and to levy a rate or rates throughout the whole of their district for purposes similar to those or to some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of Part III. of this Act by means of money to be borrowed, and a rate or rates to be levied, under such local Act or Acts.

Schedule 2.

Section 20.

SECOND SCHEDULE.

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS.

This schedule amends the provisions of the Lands Clauses Acts as incorporated by section 20 with respect to the purchase and taking of land otherwise than by agreement for the purposes of Part I. of the Act. See section 20, *ante*, p. 611.

Deposit of Maps and Plans.

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily (which lands are hereinafter referred to as the scheduled lands), together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers. 38 & 39 Vict. c. 36, Sched.

The confirming Act is the Act confirming the provisional order. See section 8, sub-section (6), *ante*, p. 605. As to the maps, &c., which accompany the improvement scheme itself, see section 6, *ante*, p. 602.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority.

As to the confirming authority, see section 8, sub-section (2), *ante*, p. 604. In the case of a scheme by an urban authority the confirming authority is the Local Government Board.

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

This provision supersedes all the provisions of the Lands Clauses Acts as to the tribunal for assessing compensation. Under those Acts compensation is assessed by a jury or by arbitrators appointed by the parties.

Proceedings on Arbitration.

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say, 45 & 46 Vict. c. 54, Sched. (1), *a-f*.

“I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Housing of the Working Classes Act, 1890. A. B.

‘Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator,

Schedule 2. having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

This clause resembles 8 & 9 Vict. c. 18, s. 33. The declaration may be made before any justice though not a justice of the locality. See *In re Davies and South Staffordshire Railway Company*, 15 Jur. 1133; 21 L. J. M. C. 52; 2 L. M. & P. 599. As to whether failure to make a declaration is ground for setting aside the award, see *Levick v. Epsom and Leatherhead Railway Company*, 1 L. T. (N.S.) 60.

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

42 & 43 Vict.
c. 63, Sched.
Art. 1.

Such publication shall be made not only by advertisement, but also by placards and handbills fixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

(7.) In every case in which compensation is payable under Part I. of this Act by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as a “disputed case”), the arbitrator shall ascertain in such manner as he thinks most convenient, the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested in each disputed case as may appear before him at the time and place of which notice has been given as in Part I. of this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

In a case decided on the repealed schedule of 38 & 39 Vict. c. 36, the Metropolitan Board of Works served on the plaintiff, the lessee of property required for an improvement scheme, a notice for him to send in a statement as to the nature of his claim. This was done, but the arbitrator appointed under the Act, through some omission, did not include the plaintiff's interest in his provisional award. The plaintiff subsequently received a two days' notice to attend before the arbitrator that his claim might be considered. He attended accordingly, though under protest, and stated his claim, which was considered by the arbitrator, who altered his provisional award by inserting the amount of compensation awarded by him to the plaintiff in respect of his interest. This was confirmed by the final award. In an action to set aside the award it was held that, notwithstanding the omission of the plaintiff's interest from the provisional award, he was a “person interested” therein within the meaning of the corresponding clause in the schedule to the Act of 1875 (now repealed), that the proceedings of the arbitrator in considering his claim under that clause, and in altering his provisional award, were regular, and that the final award was good. *Carr v. Metropolitan Board of Works*, 14 Ch. D. 807; 49 L. J. Ch. 272; 42 L. T. (N.S.) 354.

It is not quite clear what notice of time and place is referred to, Probably it is the notice under section 18, *ante*, p. 611.

(8.) The arbitrator shall give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(9.) After the arbitrator has arrived at a decision on all the disputed cases brought before him, he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an

appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may, and, if the local authority request him so to do, shall from time to time make an award respecting a portion only of the disputed cases brought before him. Schedule 2.

As to appeal, see rule 26, *post*, p. 669.

The latter part of this rule enabling the arbitrator to make an award respecting a portion only of the disputed cases is an addition to the corresponding provision in 45 & 46 Vict. c. 54, Schedule.

(10.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish, once in each of three successive weeks, notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance.

This rule is taken without change from 45 & 46 Vict. c. 54, Schedule.

Special Powers of Arbitration.

(11.) The arbitrator shall have the same power of apportioning any rent-service rentcharge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845. Power of arbitrator as to apportionment.
42 & 43 Vict. c. 63, Sched. (2).

The 8 & 9 Vict. c. 18, ss. 116, 119, *post*, give to two justices power to apportion a rent-service, &c., where part only of the lands charged therewith are required to be taken.

(12.) Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and, if he so determine, may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. Amendment respecting severance of properties.
8 & 9 Vict. c. 18.
42 & 43 Vict. c. 63, Sched. (3).

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of compensation for land by this schedule, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

The 8 & 9 Vict. c. 18, s. 92, provides that no party shall be required to sell or convey a part only of any house or other building or manufactory, if he be willing and able to sell and convey the whole thereof. See the note to section 38 (7), *ante*, p. 626.

As to appeal to a jury, see rule 26, *post*, p. 669.

Schedule 2.

Omitted
interests.
42 & 43
Vict. c. 63,
Sched. (4).

(13.) The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have, through mistake or inadvertence, failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part, either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

The 8 & 9 Vict. c. 18, s. 124, provides, in effect, that the promoters shall be entitled to purchase interests in land, the purchase whereof may have been omitted by mistake.

Payment of Purchase Money.

Arts. 14—24.
See 38 & 39
Vict. c. 36,
Sched.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

The statement and abstract referred to are those mentioned in rule 10, *ante*, p. 665.

(15.) Every such certificate shall be prepared by and at the cost of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall

give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the cost of the local authority. Schedule 2.

As the receipt will take the place of a conveyance, it should be carefully drawn so as to identify the lands in respect of which it is given.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid, shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

The clauses of the Lands Clauses Act here referred to are sections 69—80, *post*. By the Court of Chancery Funds Act, 1872, the office of Accountant-General of the Court of Chancery was abolished, and his duties transferred to the Paymaster-General. See also 46 & 47 Vict. c. 29.

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have, under the provisions of Part I. of this Act, taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the cost of the local authority.

As to the abstract hereinbefore mentioned, see rule 10, *ante*, p. 665.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands, the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the cost and charge of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act, may be in like manner enforced against the local authority by such application as aforesaid.

Schedule 2.

Entry on Lands on making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority at any time after he has framed such award, certify under his hand the sum which, in his opinion, shall be so deposited by the local authority in respect of any lands mentioned in such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this Act, shall be had, and payments made, as if such entry and deposit had not been made;

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where under the provisions of Part I. of this Act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any compensation money, the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

The object of this clause was said to be "to entitle the local authority to enter upon land for the purpose of improvement, though the purchase is not completed:" Per GROVE, J., in *Barnet v. Metropolitan Board of Works*, 46 L. T. (N.S.) 384; 46 J. P. 469.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon such payment as aforesaid by the local authority, it shall be lawful for the High Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

The money does not become payable until the award has been made. The ownership does not pass till after the award. See *Barnet v. Metropolitan Board of Works*, *supra*. As to the payment of money out of court under these clauses, see *Ex parte Jones*, 14 Ch. D. 624; 43 L. T. (N.S.) 84.

*Appeal.***Schedule 2.**

(26.) In the following cases, namely,—

See 45 & 46
Vict. c. 54,
Sched. (G.).

- (a.) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds one thousand pounds ; and
- (b.) Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds one thousand pounds ; also
- (c.) Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of Part I. of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceeds the sum of one thousand pounds ;

the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such court or any judge thereof at chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

- (1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate ;
- (2.) Where moneys have been paid into court, at the date of the payment into court ;
- (3.) Where the local authority appeals, at the date of the making of the award.

This rule reproduces 38 & 39 Vict. c. 36, sched., r. 26, as amended by 45 & 46 Vict. c. 54, sched. (g), and 48 & 49 Vict. c. 53, s. 5, sub-section (3).

As to the granting of a certificate, see rule 14, *ante*, p. 666.

As to payment into court, see rules 20—24, *ante*, p. 667.

As to the date of making the award, see rule 9, *ante*, p. 664.

If, on application to a judge at chambers for leave to appeal, such leave is refused, there is no appeal from his decision. *Ex parte Stevenson* [1892], 1 Q. B. 394 ; 56 J. P. 408 ; affd. in C. A. [1892], 1 Q. B. 609 ; 61 L. J. Q. B. 492 ; 66 L. T. (N.S.) 544 ; 40 W. R. 417 ; 56 J. P. 501 ; 8 T. L. R. 486.

Where land has been compulsorily taken under this Act, leave to appeal from the arbitrator's award will not be given merely on the affidavits of valuers who swear that, in their opinion, the amount awarded is less than the true value. *Ex parte Birch* [1894], 2 Ir. R. 181. The jurisdiction of the court in granting leave to appeal is not limited to the consideration of a point of law. If the court is satisfied from the evidence that the amount of the award is manifestly improper, they may interfere. *Ex parte Larmuth*, 10 T. L. R. 225.

(27.) Where a notice has been given under Part I. of this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one : (a) Provided also, that—

- (1.) Where the local authority appeals that authority shall be deemed to be the plaintiff and the party entitled to compensation to be the defendant ; and

- Schedule 2.** (2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court ;(b) but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.
- (3.) Where the local authority is the appellant,—
- (a.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct ; and
- (b.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.
- (c.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.
- (a) The provisions of the Lands Clauses Act, 1845, hereby incorporated are set out *post*.
- (b) Where on appeal a larger sum is given by a jury, and the difference between the two sums is subsequently paid into court, interest at 4 per cent. per annum from the date of the first payment to the date of the second payment is payable on such difference. *In re Shaw and the Corporation of Birmingham*, 27 Ch. D. 614 ; 54 L. J. Ch. 51 ; 51 L. T. (N.S.) 684 ; 33 W. R. 74.

Costs of Arbitration.

See 45 & 46
Vict. c. 54,
Sched. (H.).

(28.) The salary or remuneration, travelling, and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of Part I. of this Act into execution, shall, after the amount thereof shall have been certified under this article, be paid by the local authority ; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority ; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

As to the costs incurred by the confirming authority under Part I., see section 8 (8), *ante*, p. 605 ; also section 16 (2), *ante*, p. 611.

(29.) (1.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration and the amount of the costs so certified shall be paid by the local authority ;

Provided that—

- (a.) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority ;

See 45 & 46
Vict. c. 54,
Sched. (I.).

- (b.) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator. Schedule 2.
- (c.) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim before the appointment of the arbitrator.

(2.) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of Part I. of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of Part I. of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the *London Gazette*.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

As to the service of notices under Part I., see section 7, *ante*, p. 603.

Application of Schedule to Scotland.

The provisions of this schedule shall apply to Scotland, with the following modifications :— Application of schedule to Scotland.

(33.) (a.) In any reference in this schedule to “an abstract of title” there shall be substituted “a legal progress of the title deeds”:

(b.) In articles sixteen and eighteen of this schedule the words heirs, executors, or assignees shall be substituted for the words “executors, administrators, or assigns”:

(c.) In articles twenty and twenty-one the words “as amended by the Court of Chancery Funds Act, 1872,” shall be omitted;

Schedule 2. (d.) Any reference to payment of money into the Bank of England shall be construed to be payment into any one of the incorporated or chartered banks of Scotland :

(e.) Any reference to the High Court shall be construed as a reference to the Court of Session :

(f.) Any money ordered to be invested under article twenty-five of this schedule shall be invested only in Government securities :

(g.) Any reference to payment of money into court shall be construed as payment into bank :

(h.) A reference to plaintiff and defendant shall be construed as a reference to pursuer and defender :

(i.) The *Edinburgh Gazette* shall be substituted for the *London Gazette*.

(34.) In lieu of Articles 11, 17, and 19 of this schedule the following provisions shall be substituted :—

(i.) The arbitrator shall have the same power of apportioning any feu duty, ground annual, casualty or superiority, or any rent or other annual or recurring payment or incumbrance, or any rent payable in respect of lands comprised in a lease, as the sheriff has under the Lands Clauses Consolidation (Scotland) Act, 1845.

(ii.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to record the same in the books of council and session, or other judges' books competent, and to have a decree interponed thereto, and to be extracted with a view to execution, in the like manner as if a formal clause of registration had been contained therein ; and all diligence and execution shall be competent thereon in the like manner and to all effects as upon any bond containing such formal clause of registration ; and all moneys payable under such certificates, or to be recovered by such execution and diligence as aforesaid, shall be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(iii.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a conveyance of the lands in respect of which such moneys are paid, or of all the estate and interest of such party, and of all parties claiming under or through him, in such lands, and every such conveyance shall be prepared by and at the costs of the local authority.

Application of Schedule to Ireland.

(35.) The provisions of this schedule shall apply to Ireland, with the following modifications :—

13 & 14 Vict.
c. 51.

(a.) In articles twenty and twenty-one the words and figures "the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter fifty-one, intituled 'An Act for the transfer of the equitable jurisdiction of the Court of Exchequer to the Court of Chancery in Ireland, and any subsequent enactment,'" shall be substituted for the words and figures "the Court of Chancery Funds Act, 1872."

(b.) The Bank of Ireland shall be substituted for the Bank of England.

(c.) The *Dublin Gazette* shall be substituted for the *London Gazette*.

Schedule 3.

THIRD SCHEDULE.

ENACTMENTS APPLIED for the purpose of PROCEEDINGS for CLOSING PREMISES in ENGLAND SCOTLAND, and IRELAND respectively. Sections 29, 32.

ENGLAND.

Administrative County of London.

SANITARY ACT, 1866 (Section 21).

29 & 30 Vict.
c. 90.

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13).

18 & 19 Vict.
c. 121.

SANITARY ACT, 1866 (Section 21).

Sect. 21. The nuisance authority . . . shall, previous to taking proceedings before a justice under the twelfth section of the Nuisances Removal Act, 1855, serve a notice . . . on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works, and to do all such things as may be necessary within a time to be specified in the notice: Provided, As to proceedings of nuisance authority under section 12 of 18 & 19 Vict. c. 121.

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner :

* * * * *

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13).

Sect. 8. The word nuisances under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health.

* * * * *

Sect. 12. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and, although the same may have been since removed or discontinued, is, in their opinion, likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring . . . the owner or occupier of the premises on which the nuisance arises to appear before any two justices, in petty sessions assembled, at their usual place of meeting, who shall proceed to inquire into the said complaint ; . . . Proceedings by local authority before justices in case of nuisances likely to recur, &c.

Sect. 13. . . . and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose, they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

At the time when this Act was passed the Nuisances Removal Act, 1855, and the Sanitary Act, 1866, were in force in the metropolis. They have since been repealed by the Public Health (London) Act, 1891, but this repeal does not, apparently, alter the procedure under this Act. See the note to section 29, *ante*, p. 618.

Schedule 3.

38 & 39 Vict.
c. 55.

Elsewhere than London.

PUBLIC HEALTH ACT, 1875 (Sections 91, 94, 95, and 97).

Sect. 91. For the purposes of this Act—

(1.) Any premises in such a state as to be a nuisance or injurious to health . . . shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

This provision must be read subject to sections 30—32, which provide for “any dwelling-house . . . so dangerous or injurious to health as to be unfit for human habitation;” and see also section 97 of the Public Health Act, 1875, *infra*.

Local authority to serve notice requiring abatement of nuisance,

Sect. 94. . . . the local authority shall . . . serve a notice . . . on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose: Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner.

* * * * *

See the notes to this section, *ante*, p. 115. It has been held that the notice under this section is bad unless it specifies the works which are necessary to abate the nuisance. *Reg. v. Wheatley*, 16 Q. B. D. 34; 55 L. J. M. C. 11; 34 W. R. 257; 50 J. P. 424. But the form of notice prescribed by section 32 (2), *ante*, p. 619, and sched. 4, *post*, does not specify any works required to be done, and it appears to be impossible to contend that the notice should do so. To prevent injustice from such a cause it may be necessary for justices to exercise their powers of adjournment to enable a defendant to do what is necessary, and they can always, in awarding costs, take into account the conduct of a local authority in granting or withholding particulars of the nuisances which are alleged to render the dwelling-house unfit for human habitation.

On non-compliance with notice complaint to be made to justice.

Sect. 95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

See the notes to this section, *ante*, p. 119.

See the form of summons in the Fourth Schedule, *post*.

Order of prohibition in case of house unfit for human habitation.

Sect. 97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the court being satisfied that it has been rendered fit for that purpose, the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

As already stated, the nuisance must be one dangerous or injurious to health. See the note to section 91, *supra*.

SCOTLAND.

30 & 31 Vict.
c. 101.

PUBLIC HEALTH (SCOTLAND) ACT, 1867 (Sections 16, 18, and 19).

Sect. 16. The word “nuisance” under this Act shall include—

(a.) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper drainage, or suitable watercloset or privy accommodation or

cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates or unfit for human habitation or use—

* * * * *

Sect. 18. In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, . . . and, although the same may have been since removed or discontinued, is, in their opinion, likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner hereinafter directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand of admission was made or the certificate was given, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance. . . .

Proceedings by local authority when nuisances are ascertained to exist.

Sect. 19. . . . and if the nuisance proved to exist be such as to render a house or building unfit for human habitation, he(a) may prohibit the using thereof for that purpose, until it is rendered fit for that purpose, or do otherwise as the case may, in his judgment, require.

(a) i.e., the sheriff, magistrate, or justice.

IRELAND.

PUBLIC HEALTH (IRELAND) ACT, 1878 (Sections 107, 110, 111, and 113).

41 & 42 Vict.
c. 52.

Sect. 107. For the purposes of this Act—

(1.) Any premises in such a state as to be a nuisance or injurious to health . . . shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

Sect. 110. . . . the sanitary authority shall . . . serve a notice . . . on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose : Provided—

Sanitary authority to serve notice requiring abatement of nuisance.

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner :

* * * * *

Sect. 111. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises, the sanitary authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

On non-compliance with notice, complaint to be made to justice.

Sect. 113. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose ; and on the court being satisfied that it has been rendered fit for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

Order of prohibition in case of house unfit for human habitation.

Forms.

FORMS.

Section 32.

FORM A.

Form of Notice requiring Premises to be made fit for Habitation.

To [person causing the premises to be unfit for habitation, or owner or occupier of the premises, as the case may be].

Take notice, that under the provisions of the Public Health Act, 1875, and the Housing of the Working Classes Act, 1890, the [describe the local authority], being satisfied that the following premises, that is to say [describe premises or place where the nuisance exists], are in a state so dangerous or injurious to health as to be unfit for human habitation, do hereby require you within _____ from the service of this notice to make the said premises fit for human habitation.

If you make default in complying with the requisitions of this notice proceedings will be taken before a court of summary jurisdiction for prohibiting the use of the premises for human habitation.

Dated this day of , 18 .

Signature of officer }
of local authority }

See, as to this form, the notes to section 94 of the Public Health Act, 1875, in the Third Schedule, *ante*, p. 674.

FORM B.

Form of Summons for Closing Order.

To the owner or occupier of [*describe premises*], situate at [*insert such a description as may be sufficient to identify the premises*].

County of _____ You are required to appear before [describe the court of summary
[or borough of _____ jurisdiction] at the petty sessions [or court] holden at _____ on
, or district of _____ the _____ day of _____ next, at the hour of _____
, or as the case _____ in the _____ noon, to answer the complaint this day made to me
may be], to wit. _____ by _____ that the premises above mentioned are used as a
dwelling-house, and are in a state so dangerous or injurious to health as to be unfit
for human habitation.

Given under my hand and seal this day of , 18 .

FORM C.

Form of Closing Order.

To the owner [or occupier] of [describe the premises] situated [give such description as may be sufficient to identify the premises].

County of [or] WHEREAS on the _____ day of _____ complaint was
borough, &c., of _____ made before _____, Esquire, one of Her Majesty's justices
, or district of _____ of the peace acting in and for the county [or other jurisdiction]
, or as the case _____ stated in the margin [or as the case may be], by _____ that
may be]. _____ certain premises situated at _____ in the district under the
Public Health Act, 1875, of [describe the local authority], were in a state so dangerous
or injurious to health as to be unfit for human habitation:

And whereas _____, the owner [or occupier] within the meaning of the said Public Health Act, 1875, hath this day appeared before us [(or me) describing the court],

to answer the matter of the said complaint [or in case the party charged do not appear **Schedule 4.**
say], and whereas it hath been this day proved to our [or my] satisfaction that a true **Forms.**
copy of a summons requiring the owner [or occupier] of the said premises [or the said
A. B.] to appear this day before us [or me] hath been duly served according
to the said Act and the Housing of the Working Classes Act, 1890:

Now on proof here had before us [or me] that the said premises are in a state so
dangerous or injurious to health as to be unfit for human habitation, we [or I], in
pursuance of the said Acts, do prohibit the using of the premises for the purpose of
human habitation until in our [or my] judgment they are rendered fit for that
purpose.

Given under the hands and seals of us [or the hand and seal of me, describing the
court].

This day of , 18 .

J. S. (L.S.)

J. P. (L.S.)

FIFTH SCHEDULE.

FORM MARKED A.

Section 36.

The Housing of the Working Classes Act, 1890.

County of
Parish of
No. .

Charging Order.

The , being the local authority under the above-mentioned Act, do, by **Insert descrip-**
this Order under their hands and seal, charge the inheritance or fee of the premises **tion of local**
mentioned in the schedule hereto with the payment to of the sum of **authority.**
pounds payable yearly on the day of for the term of years,
and being in consideration of an expenditure of pounds incurred by him in
respect of the said premises.

FORM MARKED B.

'Form of Assignment of Charge. To be endorsed on Charging Order.

Section 37.

Dated the day of .

I, the within-named , in pursuance of the Housing of the Working
Classes Act, 1890, and in consideration of pounds this day paid to me **Insert descrip-**
hereby assign to the within-mentioned charge. **tion of pre-**
(Signed) **mises charged.**

SIXTH SCHEDULE.

Section 62.

**BYE-LAWS TO BE MADE IN ALL CASES (EXCEPT WHERE A LODGING-HOUSE IS
USED AS A SEPARATE DWELLING).**

For securing that the lodging-houses shall be under the management and control
of the officers, servants, or others appointed or employed in that behalf by the local
authority.

For securing the due separation at night of men and boys above eight years old
from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive
language and behaviour and nuisances.

For determining the duties of the officers, servants, and others appointed by the
local authority.

Schedule 7.

Forms.

SEVENTH SCHEDULE.

Section 102.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
14 & 15 Vict. c. 34 - -	The Labouring Classes Lodging Houses Act, 1851	The whole Act.
18 & 19 Vict. c. 88 - -	The Dwelling Houses (Scotland) Act, 1855	The whole Act.
29 & 30 Vict. c. 28 - -	The Labouring Classes Dwelling Houses Act, 1866	The whole Act.
29 & 30 Vict. c. 44 - -	The Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866	The whole Act.
30 & 31 Vict. c. 28 - -	The Labouring Classes Dwelling Houses Act, 1867	The whole Act.
31 & 32 Vict. c. 130 - -	The Artizans and Labourers Dwellings Act, 1868	The whole Act.
38 & 39 Vict. c. 36 - -	The Artizans and Labourers Dwellings Improvement Act, 1875	The whole Act.
38 & 39 Vict. c. 49 - -	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875	The whole Act.
42 & 43 Vict. c. 63 - -	The Artizans and Labourers Dwellings Improvement Act, 1879	The whole Act.
42 & 43 Vict. c. 64 - -	The Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879	The whole Act.
42 & 43 Vict. c. 77 - -	The Public Works Loans Act, 1879	Section six.
43 Vict. c. 2 - - -	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1880	The whole Act.
43 Vict. c. 8 - - -	An Act to explain and amend the twenty-second section of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879	The whole Act.
45 & 46 Vict. c. 54 - -	The Artizans Dwellings Act, 1882	The whole Act.
48 & 49 Vict. c. 72 - -	The Housing of the Working Classes Act, 1885	The whole Act, except sections three and seven to nine, and except section ten so far as it relates to bye-laws authorised by those sections.

THE ALLOTMENTS RATING EXEMPTION ACT, 1891.

(54 & 55 VICT. CAP. 33.)

An Act to amend the Laws relating to the Rating of Allotments for Sanitary purposes. [21st July, 1891.]

WHEREAS it is enacted by section two hundred and eleven, sub-section (1.) (b.) and section two hundred and thirty of the Public Health Act, 1875, that "the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds," shall be assessed to the general district rate in an urban district or to a separate rate levied in respect of special expenses within the meaning of the said Act in a rural district, in the proportion of one-fourth part only of the net annual value or rateable value of such land :

And whereas doubts have arisen whether allotments are or are not included among the lands to which the aforesaid exemptions apply :

And whereas it is expedient to remove such doubts, and to render the practice of assessment uniform, and to relieve allotments from all liability to be assessed for sanitary purposes at a higher rate than other cultivated lands :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

1. From and after the first day of October, one thousand eight hundred and ninety-one, section two hundred and eleven, sub-section one, (a) and section two hundred and thirty (b) of the Public Health Act, 1875, shall be read and construed as if the word "allotments" was inserted in each of those sections after the word "woodlands" : (c) Provided that nothing in this Act shall apply to any rate made under either of the said sections on or before the first day of October, one thousand eight hundred and ninety-one.

Section 1.
Amendment
of 38 & 39
Vict. c. 55,
ss. 211 (1.)
(b.), 230.

(a) See this section, *ante*, p. 282.

(b) See this section, *ante*, p. 310.

(c) This enactment is similar to that contained in the Public Health (Rating of Orchards) Act, 1890 (53 & 54 Vict. c. 17), *ante*, p. 547. Its effect is that allotments will be rateable at one-fourth only of the net rateable value for the purposes of a general district rate under section 211, or a separate rate under section 230 of the Public Health Act, 1875.

2. "Allotment" means any parcel of land of not more than two acres in extent and let as an allotment, and cultivated as a garden or a farm, or partly as a garden and partly as a farm.

Definition of
"allotment."

3. This Act may be cited as the Allotments Rating Exemption Act 1891.

Short title
of Act.

THE PRIVATE STREET WORKS ACT, 1892.

(55 & 56 VICT. CAP. 57.)

An Act to amend the Public Health Acts in relation to Private Street Improvement Expenses. [28th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Section 1.
Short title,
construction,
and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England ; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

When this Act has been adopted it will take the place of sections 150, 151, and 152 of the Public Health Act, 1875, and section 41 of the Public Health Act, 1890. See section 25, *post*.

As to the Acts comprised under the title "Public Health Acts," see the Short Titles Act, 1892 (55 & 56 Vict. c. 10). They include the Acts hereinbefore contained, except the Local Government Act, 1888 ; the Public Bodies Corrupt Practices Act, 1889 ; the Infectious Disease (Notification) Act, 1889 ; the Infectious Disease (Prevention) Act, 1890 ; and the Housing of the Working Classes Act, 1890.

"England" includes Wales. 20 Geo. 2, c. 42, s. 3.

Adoption of
Act.

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act.

The mode of adoption of the Act is provided for by the next section.

Adoption of
Act by urban
authorities.

3. The following provisions shall have effect with regard to the adoption of this Act by urban authorities :

(1.) The adoption shall be by a resolution passed at a meeting of the urban authority ; and one calendar month at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a.) Given in the mode in which notices to attend meetings of the authority are usually given ; (a) or

(b.) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England.

(a) See the note to the similar provision in 52 & 53 Vict. c. 72, s. 5, *ante*, p. 541. The only difference between that and the above provision is that under the text a month's notice of the meeting must be given. See also 53 & 54 Vict. c. 34, s. 3, *ante*, p. 549, and 53 & 54 Vict. c. 59, s. 3, *ante*, p. 560.

(2.) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving

Section 3.

notice thereof to all persons interested, and shall come into operation at such time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation this Act shall extend to that district.

Compare the similar provision in 52 & 53 Vict. c. 72, s. 5; 53 & 54 Vict. c. 34, s. 3; 53 & 54 Vict. c. 59, s. 3.

The churches and chapels above referred to are those of the Established Church only. See the cases mentioned in the note to section 3 (4) of the Public Health Acts Amendment Act, 1890, *ante*, p. 561.

(3.) A copy of the resolution shall be sent to the Local Government Board.

(4.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

See the note to the similar provision in 53 & 54 Vict. c. 34, s. 3, *ante*, p. 541.

4. The Local Government Board may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875.

Local Government Board may extend Act to rural districts. Interpretation.

Compare the provision in 53 & 54 Vict. c. 59, s. 5, *ante*, p. 562.

Section 276 of the Public Health Act, 1875, is set out, *ante*, p. 378.

For an instance of the exercise of powers similar to those conferred by the text, see *Fenwick v. Croydon Rural Sanitary Authority*, *ante*, p. 177.

5. In this Act, if not inconsistent with the context,—

The expression “urban authority” means an urban sanitary authority under the Public Health Acts.(a)

Interpretation.

The expressions “urban sanitary district” and “rural sanitary district” mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts,(b) and “district” means the district of an urban sanitary authority or of a rural sanitary authority, as the case may require.

The expressions “surveyor,”(c) “lands,”(d) “premises,”(d) “owner,”(e) “drain,”(f) “sewer,”(g) have respectively the same meaning as in the Public Health Acts.

The expression “street” means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large.(h)

Words referring to “paving, metalling, and flagging” shall be construed as including macadamising, asphaltting, gravelling, kerbing, and every method of making a carriageway or footway.(i)

(a) See the definition of an urban sanitary authority, *ante*, p. 24.

(b) See *ante* p. 24.

(c) “Surveyor” is defined, *ante*, p. 6.

**Note to
Section 5.**

- (d) "Lands" and "premises" are defined, *ante*, p. 6.
- (e) "Owner" is defined, *ante*, p. 6.
- (f) "Drain" is defined, *ante*, p. 18.
- (g) "Sewer" is defined, *ante*, p. 18.
- (h) See the definition of a street in section 4 of the Public Health Act, 1875, *ante*, p. 12. As to the additional words "not being a highway repairable by the inhabitants at large," see note (b) to section 150 of the Public Health Act, *ante*, p. 181.
- (i) This provision has been inserted to obviate the decision in *Attorney-General v. Bidder*, 47 J. P. 263, the effect of which has been stated, *ante*, p. 199. The text resembles 53 & 54 Vict. c. 59, s. 11, sub-sect. (2), *ante*, p. 565.

**Private street
works.**

6. (1.) Where any street(*a*) or part of a street(*b*) is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, (*c*) the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. (*d*) Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street. (*e*)

(*a*) See the definition in the preceding section.

(*b*) See the note to the similar words in section 150 of the Public Health Act, 1875, *ante*, p. 176.

(*c*) As to what is included in the terms "paved, metalled, flagged," see section 5, *ante*, p. 681.

As to when a street has been sewered, &c., to the satisfaction of the urban authority, see *Bonella v. Twickenham Local Board*, *Barrow-in-Furness (Mayor, &c., of) v. Dawson*, *Walthamstow Local Board v. Staines*, *Barry and Cadoston Local Board v. Parry*, *ante*, p. 179.

(*d*) As to what are premises fronting, adjoining, or abutting on a street, see the notes on p. 184, *ante*.

(*e*) This is a new provision.

(2.) The surveyor shall prepare, as respects each street or part of a street, (*a*)—

(*a*.) A specification of the private street works referred to in the resolution, with plans and sections (if applicable);

(*b*.) An estimate of the probable expenses of the works;

(*c*.) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act. (*b*)

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit. (*c*)

(*a*) Although the original resolution may include several streets or parts of streets, the surveyor must deal with each separately in making his specification, &c.

(*b*) As to the manner in which the provisional apportionment is to be made, see section 10, *post*.

(*c*) This is a second resolution, quite distinct from that mentioned in sub-section (1). It must be published in the manner provided by the next sub-section. The specifications, &c., are not required to be published, but only the resolution, which should, therefore, clearly identify the specifications, &c., to which it refers.

Section 6.

(3.) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act, (a) and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. (b) During one month from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the urban authority offices, and shall be open to inspection at all reasonable times. (c)

(a) That is, by advertisement in a local paper once in each of two successive weeks, and by posting copies in or near the street once at least in each of three successive weeks. See the Schedule, *post*.

(b) This Act does not provide for the service of the notices. They may, therefore, be served in manner provided by section 267 of the Public Health Act, 1875, *ante*, p. 359. And they may be authenticated in manner provided by section 266 of that Act, *ante*, p. 358.

(c) Reasonable times would probably be held equivalent to usual office hours.

"Month" means calendar month. 52 & 53 Vict. c. 63, s. 3.

7. During the said month any owner of any premises (a) shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the urban authority, (b) object to the proposals of the urban authority on any of the following grounds; (that is to say,)

Objection to proposed works.

(a.) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act; (c)

(b.) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large; (d)

(c.) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate; (e)

(d.) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive; (f)

(e.) That any premises ought to be excluded from or inserted in the provisional apportionment; (g)

(f.) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises. (h)

For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common.

(a) The expressions "owner" and "premises" are defined, *ante*, p. 6. If a mistake has been made as to who is the owner, the real owner cannot object under this section, as his name is not shown in the provisional apportionment, and he will not, therefore, be affected by it.

(b) No mode of service is prescribed. It is presumed that a notice addressed to the urban authority, and left at their office during business hours, will be sufficient.

(c) Having regard to the very wide definition of a street in section 4 of the Public Health Act, 1875, it is unlikely that objection will arise on the ground that the place in question is not a street as therein defined (see the note, *ante*, p. 176). But the

**Note to
Section 7.**

definition of a street in this Act (section 5, *ante*) adds the words "not being a highway repairable by the inhabitants at large," and these words, as used in section 150 of the Public Health Act, 1875, have been the subject of much litigation. It is unnecessary to refer to the cases here : they will be found in the note to the section last mentioned, *ante*, p. 181. The objection that the street is a highway repairable by the inhabitants at large has always been within the cognizance of a court of summary jurisdiction, and was taken where proceedings were instituted to enforce payment of the sum apportioned. See the cases cited *ante*, p. 189.

(*d*) This ground of objection was to a large extent included in the first. But it is to be observed that an owner may object that part of the street was formerly a highway repairable by the inhabitants at large, and the Act is silent as to what is to be done if the objection is made out. Under section 150 of the Public Health Act, 1875, the owner would have been liable to pay in respect of the entire street, including the old highway. *Evans v. Newport Sanitary Authority*, *ante*, p. 197. But there is no provision here to that effect, and it is doubtful what the justices are to do, whether to quash the resolution or to amend it by leaving out the part "which was an old highway," or how otherwise.

(*e*) Under this head an owner whose name appears in the provisional apportionment may show that he is not the owner.

(*f*) Under the Public Health Act, 1875, justices have no jurisdiction to entertain objections of this kind. It was for the urban authority, in the first instance, to determine whether the proposed works were or were not insufficient or unreasonable, subject only to an appeal to the Local Government Board under section 268 (see *ante*, p. 360). The provision in the text virtually makes the justices a court of review in respect of matters which are peculiarly within the cognizance of the urban authority, and this has been strongly urged as a reason for not adopting the Act.

The court has jurisdiction under this clause to take into consideration the existing state of the drainage in a street proposed to be sewered. Therefore, where houses were drained from the back into a sewer, the magistrate was held justified in finding it unreasonable to provide a sewer from the street in front, except for surface and sink water. *Sheffield (Mayor, &c., of) v. Anderson*, 64 L. J. M. C. 44 ; 71 L. T. (N.S.) 242.

(*g*) If the apportionment is according to frontage, the objection will simply be that the premises are not fronting, adjoining, or abutting, as to which see *ante*, p. 184. But under section 10, *post*, the apportionment may be made having regard to the benefit derived by premises, and an owner may object on the ground that this principle should have been adopted, and that, if adopted, it has not been properly carried out. Thus, he might contend that he was charged equally with another person whose benefit was greater, or that some person whose premises were benefited was left out altogether, &c.

(*h*) As to this, see section 10, *post*.

Hearing and
determination
of objections.

8. (1.) The urban authority at any time after the expiration of the said month may apply to a court of summary jurisdiction (*a*) to appoint a time for determining the matter of all objections (*b*) made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors ; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable. (*c*) The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority. (*d*) The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given. (*e*)

(*a*) See the definition, *ante*, p. 22.

(*b*) It appears to be contemplated that the whole of the objections shall be heard together.

Note to
Section 8.

(c) That is to say, the procedure is to be the same as if the urban authority were complainants and the objectors were summoned for the recovery of the expenses. One result of this is that the burden of proof will be on the urban authority.

(d) The powers here conferred on the court are very wide, and enable the justices to correct any mistake at any step in the procedure.

(e) This will apply apparently where notice has been served on the wrong person under section 6, or it has been resolved to add an owner of premises who is suggested to derive benefit from the proposed works.

(2.) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

Therefore an owner cannot, when proceedings are taken against him under section 14, *post*, for recovery of the expenses finally apportioned, raise by way of defence any objection which might have been raised and determined in manner provided by this and the preceding section. And it would seem that it takes away the jurisdiction of the Local Government Board under section 268 of the Public Health Act, 1875, *ante*, p. 360, so far, at least, as relate to any ground of objection which might have been so raised and determined.

(3.) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.

Under this sub-section the court may order each objector to pay his share of the costs of the urban authority, or the court may order that the share payable by each may be added to the expenses for which each objector may ultimately be made liable, and recovered accordingly, as provided by sections 12 and 13, *post*.

9. (1.) The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively. Incidental works.

Under section 150 of the Public Health Act, 1875, a street dealt with must be regarded as an isolated street, and the owners cannot be required to make it on a level, &c., with other streets. See *Carey v. Kingston-upon-Hull Local Board*, *ante*, p. 178. The provision in the text was evidently inserted with a view to this decision.

(2.) The urban authority in any estimate of the expenses of private street works may include a commission not exceeding five pounds per centum (in addition to the estimated actual cost) in respect of surveys, superintendence, and notices, and such commission when received shall be carried to the credit of the district fund.

It is doubtful whether such charges can be recovered under section 150 of the Public Health Act, 1875. See *Walthamstow Local Board v. Staines* [1891], 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. (N.S.) 430; 7 T. L. R. 446.

The commission must be entered when received in the separate accounts kept under section 21, *post*, though it will be applied differently from the expenses.

Section 10.

Apportion-
ment of
expenses.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say,)

(a.) The greater or less degree of benefit to be derived by any premises from such works;

(b.) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

Under the Public Health Act, 1875, s. 150, the expenses must be apportioned according to frontage. Under this Act they must also be apportioned according to frontage, unless the urban authority resolve to exercise the power here conferred upon them. If they do so resolve it will be the duty of the surveyor to take into account, in making his apportionment, any special benefit which he may consider that any of the premises derive from the works over and above other premises in the street. He must also take into account the amount and value of any work which may have been done by any owner or occupier of premises whereby the total cost of the work to be done has been diminished. The apportionment of the surveyor must be approved by the urban authority under section 6, and may be objected to under section 7, *ante*, p. 683.

A local board resolved to execute certain private street works in a street which had buildings on the north side only, and was bounded on the south side chiefly by land of which the local board were owners. The works comprised the making up of the roadway, and the paving and kerbing of a footpath on the north side only. No footpath was made on the south side. The surveyor of the local board made a provisional apportionment by which the expenses of paving and kerbing the footpath were apportioned among the owners of premises abutting on the north side only. All the other expenses of the proposed works being apportioned amongst the owners of premises abutting on both sides of the street, including the local board as the owners of land on the south side, it was held that the provisional apportionment of the expenses of the footpath was wrong, and they were properly apportionable among the owners of premises on both sides of the street. *Clacton-on-Sea Local Board v. Young* [1895], 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. (N.S.) 877; 43 W. R. 219; 59 J. P. 581; 11 T. L. R. 118.

The latter part of this section contains a new provision, whereby premises may be made liable to contribute though not abutting on the street. See *Baddelley v. Giggell* and *London School Board v. Vestry of St. Mary, Islington*, *ante*, p. 184. The condition of this liability are that such premises have access to the street and are benefited by the works. The owner of such premises may object under section 7, *ante*, p. 683.

Amendment
of plan, &c.

11. The urban authority may from time to time amend the specifications, plans, and sections (if any), estimates and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the Schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment, and if made

shall be dealt with and determined in like manner as objections to the original estimate and apportionment. Section 11.

If the amendment does not increase the estimate nothing more need be done ; but if it does it will be necessary to proceed *de novo*, and to advertise and give notices as mentioned in Part II. of the Schedule. As to the objections, see section 7, *ante*, p. 683.

12. (1.) When any private street works have been completed, and the expenses thereof ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be), and such final apportionment shall be conclusive for all purposes ; and notice of such final apportionment shall be served upon the owners of the premises affected thereby ; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments. Final apportionment and recovery of expenses.
38 & 39 Vict.
c. 55.

The final apportionment may be objected to in manner provided by the next subsection.

As to the recovery of sums under this Act, see section 14, *post*.

The power to declare expenses payable by instalments is contained in the Public Health Act, 1875, s. 257, *ante*, p. 341.

(2.) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them :—

- (a.) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.
- (b.) That the final apportionment has not been made in accordance with this section.
- (c.) That there has been an unreasonable departure from the specification, plans, and sections.

The Act is silent as to what is to happen if the objector makes good his objection. The justices will apparently have power to quash or amend the apportionment by reducing the amount apportioned upon any owner.

The third of the above grounds has not hitherto been cognizable by justices in summary proceedings under section 150 of the Public Health Act, 1875. See *Cook v. Ipswich Local Board* and the other cases cited, *ante*, p. 190.

(3.) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

See section 8, *ante*, p. 684.

13. (1.) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Charge on premises.

Section 13. Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

See the Public Health Act, 1875, s. 257, *ante*, p. 341, and the notes thereon.

The section does not state from what date the interest is to run. See, however, section 14, *post*. Under the Public Health Act, 1875, s. 257, it runs from date of demand. Under the same section the rate of interest is to be a rate not exceeding 5 per cent.

The provisions of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), above referred to, are contained in sections 19—24. The power to appoint a receiver is the most useful of the powers hereby conferred on the urban authority.

(2.) The urban authority shall keep a register of charges under this Act and of the payment made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority.

This is a very useful provision. Charges under section 257 of the Public Health Act, 1875, do not require registration under the Land Charges Registration Act, 1888 (*Reg. v. Land Registry (Vice-Registrar of)*, *ante*, p. 345); consequently, a purchaser of property in an urban district may have no means of knowledge whether such property is subject to a charge. Where the Act has been adopted there will be no such difficulty, and it will always be prudent for an intending purchaser to make a search under this section.

Recovery of
expenses
summarily or
by action.

14. The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof.

Under the Public Health Act, 1875, s. 153, the only remedies for recovery of expenses were by summary proceedings, or, in cases where the expenses were under 50*l.*, by action in the county court under section 261. See the note at p. 188, *ante*. Under the above provision an action may be brought in the High Court if it is thought desirable. The expenses being recoverable from the owner for the time being, a purchaser may become liable for expenses incurred before the date of the purchase. See *East London Waterworks Company v. Kellerman* [1892], 2 Q. B. 72; 67 L. T. (N.S.) 319; 56 J. P. 773; 8 T. L. R. 556.

Contribution
by urban
authority to
expenses.

15. The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable.

This is a new provision. Under the Public Health Act, 1875, the expenses could not be defrayed out of the rates. See *Dryden v. Putney (Overseers of)*, *ante*, p. 192. The general expenses are payable out of the general district rate, but sometimes out of the borough fund under section 207 of the Public Health Act, 1875, *ante*, p. 276.

Exemption
from expenses
of incumbent
of church.

16. The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be

Section 16.

liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.

This section is intended to be in substitution for section 151 of the Public Health Act, 1875, and there are some points of difference which should be noted. It exempts not only incumbents and ministers, but trustees also, thus meeting the decision in *Hornsey Local Board v. Brewis*, *ante*, p. 198. And the text requires, not simply enables, the local authority to bear the proportion in respect of which an exemption is allowed.

As to the exemption of churches, chapels, &c., from poor rates, see note (a), *ante*, p. 197.

The expression "private street works" is defined in section 6, *ante*, p. 682.

17. All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners of or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years. Power for limited owners to borrow for expenses.

See the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 7, 8, *post*, as to the persons under disability or limited owners, such as tenants for life, who have power to sell and convey or release lands under that Act.

Under the above section a limited owner may charge or mortgage the premises, and not merely his interest in them. Compare section 31 of the Public Health Act, 1875, *ante*, p. 61.

18. The urban authority may from time to time, with the sanction of the Local Government Board, borrow, on the security of the district fund and general district rates, or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable, moneys for the purpose of temporarily providing for expenses of private street works, and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875. Power for urban authority to borrow for private street works.

As to the rates out of which the general expenses of an urban authority are defrayed, see section 207 of the Public Health Act, 1875, *ante*, p. 276.

As to the borrowing powers of an urban authority under the same Act, see sections 233—243, *ante*, p. 314.

19. Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as Adoption of private streets.

Section 19. defined in the notice shall become a highway repairable by the inhabitants at large.

This section is in substitution for section 152 of the Public Health Act, 1875, *ante*, p. 198, or, where the Public Health Acts Amendment Act, 1890, have been adopted, for section 41 of that Act, *ante*, p. 589. It is practically identical with the section last referred to, and its effect has already been explained in the note to that section.

It is to be observed, however, that the text does not enable the owners of the street to object to its being declared a highway repairable by the inhabitants at large; so that under this Act a street in all respects private and never dedicated to the public use may be opened for public traffic without the consent of the owners, and possibly to their detriment.

On street being paved, &c., urban authority to declare same public highway.

20. If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large.

This section will apply only when all the works above mentioned have been executed in the street. The expression "houses and land in such street" avoids the ambiguity which has been pointed out in the note to section 41 of the Act of 1890, *ante*, p. 590. The urban authority will have no discretion under this section.

Separate accounts of expenses of works.

21. (1.) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

(2.) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works, or if there is no such loan outstanding then in such manner as may be directed by the Local Government Board.

The urban authority may borrow for private street works under section 18. If they do borrow, the sums they recover from the owners must be applied in payment of the loans.

Railways and canals abutting but not communicating with streets not to be chargeable with private street expenses.

22. No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street; (a) and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor; (b) and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision,

such company would in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive.^(c) This section shall not apply to any street existing at the date of the adoption of this Act. Section 22.

(a) This provision is intended to meet the decisions in *Higgins v. Harding and London and North-Western Railway Company v. St. Pancras (Vestry of)*, *ante*, p. 184. It will only apply where there is no communication between the railway and the street.

(b) This is rather hard on the owners in question. It seems to signify that the sum which otherwise would have been apportioned to the company shall be paid by the other owners in the proportion settled by the surveyor. It does not provide that the whole of the expenses are to be apportioned among the owners other than the company in the first instance.

(c) No provision is here made for the case where there have been changes of ownership.

23. All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts. Expenses of local authority.

The expenses of an urban authority will, therefore, be defrayed out of the rate mentioned in section 207 of the Public Health Act, 1875, *ante*, p. 276. The rate will generally be the general district rate. Where a rural authority adopt the Act by virtue of urban powers conferred on them under section 4, *ante*, their expenses will be defrayed as general expenses, as to which see section 229 of the Public Health Act, 1875, *ante*, p. 308.

24. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed. Powers of Act cumulative.

This section preserves the effect of local Acts, and where there is such an Act in force the local authority will have an alternative remedy.

Compare section 341 of the Public Health Act, 1875, *ante*, p. 423, and section 10 (1) of the Public Health Acts Amendment Act, 1890, *ante*, p. 564.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force. Certain sections of Public Health Acts not to apply.

This Act when adopted takes the place of the sections named in the text.

26. This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames. For protection of Conservators of the River Thames.

See the Thames Conservancy Act, 1894, 57 & 58 Vict. c. clxxxvii.

Schedule.

Sections 6, 11.

THE SCHEDULE.

PRIVATE STREET WORKS.

PART I.

PARTICULARS TO BE STATED IN SPECIFICATIONS, PLANS AND SECTIONS, ESTIMATES, AND PROVISIONAL APPORTIONMENTS.

Specifications.—These shall describe generally the works and things to be done, and in the case of structural works shall specify as far as may be the foundation, form, material, and dimensions thereof.

Plans and Sections.—These shall show the constructive character of the works, and the connexions (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

Estimates.—These shall show the particulars of the probable cost of the whole works, including the commission provided for by this Act.

Provisional Apportionments.—These shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners, and shall also state whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based.

PART II.

PUBLICATION OF NOTICE.

Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks.

THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(56 & 57 VICT. CAP. 61.)

An Act to generalise and amend certain statutory provisions for the Protection of Persons acting in the execution of Statutory and other Public Duties. [5th December, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Protection of
persons
acting in
execution of

1.(a) Where after the commencement of this Act any action, prosecution, or other proceeding(b) is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament,(c) or of any public duty or

authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect: Section 1.
statutory or
other public
duty.

- (a.) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof: (d)
- (b.) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client:
- (c.) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. (e) If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action:
- (d.) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority. (f)

(a) This Act takes the place of section 264 of the Public Health Act, 1875, which it repeals. It abolishes notice of action in every case, but it limits the time within which proceedings may be instituted against a local authority.

(b) It was held that section 264 of the Public Health Act, 1875, did not apply to proceedings taken for an injunction to restrain the committing of a nuisance. *Attorney-General v. Hackney Local Board*, L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. (N.S.) 244. This was followed by the Court of Appeal in *Flower v. Low Leyton Local Board*, 5 Ch. D. 347; 46 L. J. Ch. 621; 36 L. T. (N.S.) 760; 25 W. R. 545; 41 J. P. 548. There it was held that the section did not apply where the object of the action was to restrain the commission of a nuisance, and that notwithstanding that the plaintiff claimed compensation for past damage. The same point was decided by DENMAN, J., in *Sellors v. Matlock Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 782. And see *Bateman v. Poplar District Board of Works*, 33 Ch. D. 360; 55 L. T. (N.S.) 374. Where an action against a sanitary authority was *bond fide*, and in substance brought for an injunction to restrain them from causing a nuisance in the future by continuing to discharge sewage into a stream, but the judge at the trial thought that under the circumstances an injunction was not then needed, because though a nuisance was caused by a discharge of sewage in an exceptionally dry season, which at the time of the trial had passed away, and it was not again likely to recur except in such a season, and he accordingly refused an injunction but gave 25*l.* damages, it was held that he had power to give such damages in accordance with the Chancery practice under Lord Cairns's Act, though no notice of action had been given under section 264. *Chapman v. Auckland Union (Guardians of)*, 23 Q. B. D. 294; 58 L. J. Q. B. 504; 61 L. T. (N.S.) 446; 53 J. P. 820. It was held that where an action was brought to recover damages and also to obtain an injunction, the whole circumstances of the case had to be looked at to determine whether the real object of the action is to recover damages or to obtain an injunction, and the application of the section depended upon the decision of this question. *Pryce v. Hole*, 6 T. L. R. 195,

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In *Whitefield v. Newquay Local Board*, "Law Times," March 18th, 1882, p. 349, BACON, V.C., held that section 264 did not apply to proceedings against a local board to restrain them from continuing a nuisance, although no interim injunction had been asked for in the action; and that it was not a defence to such an action that the plaintiff had availed himself of the provisions of section 299, by applying to the Local Government Board for and obtaining an order upon the defendants to carry out works for putting an end to the nuisance, although the Local Government Board had power under the Act to do the necessary works at the expense of the local board, if the latter made default. The section was also held to be inapplicable to an action for the recovery of land. *Foot v. Margate (Mayor of)*, 11 Q. B. D. 299; 47 J. P. 535; S. C. *Holder v. Margate (Mayor of)*, 52 L. J. Q. B. 711; and to an action brought by a contractor against a local board for a breach of contract. *Davies v. Swansea (Corporation of)*, 8 Ex. 808; 22 L. J. Ex. 297; 17 J. P. 649; and to an action for money had and received for the recovery from a local board of sums paid by mistake for paving expenses under section 150. *Midland Railway Company v. Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 789. And according to *Delaney v. Metropolitan Board of Works*, *infra*, no notice is required in cases where compensation is claimed in respect of the exercise of powers granted by the Act. The section was also held to apply to proceedings against a member of a local board for penalties under Schedule 2, rule 70, now repealed. *Lea v. Facey*, 17 Q. B. D. 139; 55 L. J. M. C. 149; 55 L. T. (N.S.) 300; 51 J. P. 20; affirmed in Court of Appeal, 19 Q. B. D. 352; 56 L. J. Q. B. 536; 35 W. R. 721; 51 J. P. 756.

(c) The defendant contracted with a local board for the digging of wells for the better supply of water, the work to be done to the satisfaction of the local board or their surveyor, and the digging to be done under the direction of the surveyor. The hole made in digging one of the wells in a highway was negligently left without sufficient light, in consequence of which the plaintiff's horse in passing fell into the hole and was injured, and for the damage thereby occasioned to the plaintiff an action was brought without notice:—Held, that the defendant was a person acting under the direction of the local board within the meaning of section 139 of the Public Health Act, 1848, and that the action was in respect of something done or intended to be done under the provisions of the Act. *Newton v. Ellis*, 5 E. & B. 115; 24 L. J. Q. B. 337; 1 Jur. (N.S.) 850; 19 J. P. 805.

The plaintiff and defendant were occupiers of adjoining houses, which were separated by a covered passage. The house of the defendant was a public-house, and the public were accustomed to commit nuisances against the wall of the plaintiff's house. The district board thereupon directed their inspector of nuisances to cause a urinal to be put up against the plaintiff's wall, and the inspector gave authority to the defendant to erect it, which he accordingly did, the district board paying a portion of the expense. It was held that the defendant was entitled to notice of action under the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 106. *Chambers v. Reid*, 13 L. T. (N.S.) 703; 14 W. R. 370; 30 J. P. 231. But where under the same Act a district board required a person to drain into a sewer, and in doing so he committed a trespass, it was held that he was acting, not under the orders or directions of the board, or by their authority, but simply in performance of a duty imposed upon him by statute, which, if he omitted, the board were empowered to call upon him to perform. *Doust v. Slater*, 10 B. & S. 400; 38 L. J. Q. B. 159; 20 L. T. (N.S.) 525; 33 J. P. 581.

The defendant, a contractor, employed by the Metropolitan Board of Works, to enlarge a sewer running into a tidal creek, erected a dam in the sewer, the water above which was removed by pumping. Owing to his negligence in not working the pumps, the sewage flowed back into the plaintiff's premises and injured them:—Held, that the injury was occasioned by acts done or intended to be done under the powers of the board under 25 & 26 Vict. c. 102, s. 107, within the meaning of that section. *Poulsum v. Thirst*, L. R. 2 C. P. 442; 36 L. J. C. P. 225; 16 L. T. (N.S.) 324; 15 W. R. 766.

The defendant, a contractor under a district board, was engaged in constructing a sewer, and employed men with horses and carts. The men so employed were allowed an hour for dinner, but were not permitted to go home to dine, or to leave their horses and carts. One of the men went home, about a quarter of a mile out of the direct line of his work, to his dinner, and left his horse unattended in the street before his door. The horse ran away, and damaged certain railings belonging to the plaintiff. The jury found that the driver was acting within the scope of his employment, and it was held that the thing complained of was not a thing done or intended

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to be done under the powers of the board, or under 25 & 26 Vict. c. 102. *Whatman v. Pearson*, L. R. 3 C. P. 422; 37 L. J. C. P. 156; 18 L. T. (N.S.) 290; 16 W. R. 649.

The plaintiff was a driver employed by contractors, who had contracted with the defendants, a metropolitan vestry, to provide them with horses and drivers for their carts used in watering the streets under the powers of 18 & 19 Vict. c. 120. The defendants negligently supplied a cart with a defective axle, and by reason thereof the plaintiff, while driving the cart for the purpose of watering the streets, was thrown off and injured. It was held that the supply of the water-cart to the plaintiff for the purpose of watering the streets was a thing done or intended to be done under the Act empowering the vestry to water the streets. *Edwards v. St. Mary, Islington (Vestry of)*, 22 Q. B. D. 338; 58 L. J. Q. B. 165; 60 L. T. (N.S.) 725; 37 W. R. 347; 53 J. P. 180; 5 T. L. R. 228.

The defendants, a local board, left unfenced a goit adjoining a public footpath within their district, by reason whereof the plaintiff's husband, while using the footpath, fell into the goit and was drowned. It was held that the alleged cause of action being the continued non-performance of a duty imposed upon them by the Act, and therefore a thing done or intended to be done under the provisions of the Act. *Wilson v. Halifax (Mayor, &c., of)*, ante, p. 158. Per KELLY, C.B.: "It is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of those clauses requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament."

The defendants, surveyors of highways, appointed under 5 & 6 Will. 4, c. 50, received payment from the plaintiff of an assessment upon a highway rate which had been improperly or irregularly made. The defendants had intended to act in the performance of the duties of their office. In an action to recover back the money, it was held that the acts complained of were done in pursuance of the Act. Per LUSH, J.: "The question was whether the defendants in making the rate intended to do what they were authorised to do. It is clear that they *bonâ fide* believed they were doing what the law allowed, and that is all that is needed to entitle them to the protection of the statute." Per BLACKBURN, J.: "It has long been decided that such a provision is intended to protect persons from the consequences of committing illegal acts which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified in its terms, and cannot be defended by its provisions." *Selmes v. Judge*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; 24 L. T. (N.S.) 904; 19 W. R. 1110; 35 J. P. 645.

So also where a local board having authority to moor a landing-stage in a navigable river, fastened it with an anchor, but omitted to bury the same properly, by reason of which omission a vessel in navigating the river suffered damage. *Joliffe v. Wallasey Local Board*, L. R. 9 C. P. 62; 43 L. J. C. P. 41; 29 L. T. (N.S.) 582; 38 J. P. 40.

To an action for slander the defendant pleaded that the words were spoken while he was acting as clerk of the markets, in pursuance of the Acts relating to municipal corporations in Ireland, which statutes entitled him to a month's notice of action for any act done in pursuance of them. The plea was held good on demurrer, for the words spoken while acting in pursuance of the statutes were as much within their protection as acts done. *Murray v. McSweeney*, Ir. Rep. 9 C. L. 545. See, however, *Royal Aquarium, &c., Society v. Parkinson* [1892], 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 613; 40 W. R. 450; 56 J. P. 404; 8 T. L. R. 352.

The omission to repair the handrail of a bridge over a brook was held to be something done in pursuance of, or under the authority of, 5 & 6 Will. 4, c. 50, so as to require notice, under section 109, of an action for an injury sustained by reason of such omission. The cases of *Wilson v. Halifax* and *Joliffe v. Wallasey Local Board* (*supra*) were said not to be distinguishable. *Holland v. Northwich Highway Board*, 34 L. T. (N.S.) 137; 40 J. P. 517.

Defendants, an urban authority, gave the plaintiffs notice to pave under section 150, and in default themselves executed the work, and the plaintiffs on demand paid the amount apportioned to them. Both parties then believed that the street was not a highway repairable by the inhabitants, but some time afterwards it was discovered that it was such a highway, and the plaintiffs sued to recover back the amount. It was held by the Court of Appeal that the claim was for something done, or omitted to be done, within this section. *Midland Railway Company v. Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 789. The court followed *Waterhouse v. Keen*, 4 B. & C. 200; and *Selmes v. Judge*, *supra*.

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A local board constructed a pier under powers given by provisional order and confirming Act. The order vested the pier in the local board as part of their corporate estate, and provided that expenses incidental to it should be discharged out of the general district rate. The plaintiffs were admitted to the pier as passengers of a steam-boat company, who paid a rent to the board for the right to land passengers at the pier. While so using the pier the plaintiffs were injured by the negligence of the board or their servants. It was held that an action for such negligence was not an action for anything done or intended to be done or omitted to be done within the meaning of the above section. *Ongley v. Chatham Local Board*, 3 T. L. R. 706; 4 T. L. R. 6.

An action was brought to recover penalties under the local Acts authorising the construction of the Swansea Waterworks. By these Acts the defendants were bound to keep up a flow of minimum quantities of water into certain streams for the benefit of persons interested including the plaintiff. In case of failure otherwise than through inevitable accident the defendants were liable to pay daily penalties and compensation. It was held that the claim was for things done or intended to be done or omitted to be done within the meaning of this section. *Lewis and Sons v. Swansea (Corporation of)*, W. N. (1887), p. 234.

(d) In *Midland Railway Company v. Withington Local Board*, *supra*, it appeared that the money was paid on the 30th October, 1880, so that the six months would expire on the 30th April, 1881. On the 13th April the plaintiff's secretary wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the board were defeated they would expect a return of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882, after a month's notice had been given. It was held that the facts did not disclose a waiver by the defendants of the benefit of the section.

As to the computation of the six months, see *Freeman v. Read*, 4 B. & S. 174; 32 L. J. M. C. 226; 8 L. T. (N.S.) 458; 11 W. R. 802; 10 Jur. (N.S.) 149; *Radcliffe v. Bartholomew* [1892], 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. (N.S.) 677; 40 W. R. 63; 56 J. P. 262; 8 T. L. R. 43. Where the cause of action is the doing of the act itself, the limitation of time runs from the act; where it is the resulting damage, it runs from the time when the damage results, and where the injurious act is continuing and causes continuous damage, the right of action also continues. See *Whitehouse v. Fellowes*, 10 C. B. (N.S.) 765; 30 L. J. C. P. 305; *Bonomi v. Backhouse*, E. B. & E. 622; 28 L. J. Q. B. 378; 34 L. J. Q. B. 181; 5 Jur. (N.S.) 1345; 7 Jur. (N.S.) 809. Where, by an Improvement Act, actions for any injury done by the commissioners under the Act were to be brought within six months after the thing done, and the defendants, proceeding under the Act to dig a sewer, cracked the walls of the plaintiff's house, it was held that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for as long a time as the crack continued. *Lloyd v. Wigney*, 6 Bing. 489.

Where an excavation made by a local authority under a street for the purpose of laying a sewer was not properly filled in, and in consequence a subsidence of the plaintiff's land with injury to houses thereon took place, which began at a period more than six months before and went on continuously down to the commencement of an action by the plaintiff in respect of such subsidence, it was held, on the authority of *Darley Main Colliery Company v. Mitchell*, 11 App. Cas. 127, that the further subsidence, which took place within the six months before action, constituted a distinct cause of action in respect of which the action was maintainable, notwithstanding the provision in the text. *Crumbie v. Wallsend Local Board* [1891], 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. (N.S.) 490; 55 J. P. 421; 7 T. L. R. 229. And see, to the same effect, *Fairbrother v. Bury Rural Sanitary Authority*, 37 W. R. 544.

In an action for compensation awarded in respect of damage occasioned by the exercise of the powers of the Act, it was held to be no defence that the action was commenced more than six months after the damage was sustained, as this section does not apply to such a claim, and still less to an action on an award made upon such claim. *Delaney v. Metropolitan Board of Works*, L. R. 3 C. P. 111; 37 L. J. C. P. 59; 17 L. T. (N.S.) 262; 16 W. R. 137; 31 J. P. 788.

(e) This seems to imply that the Act applies to proceedings other than actions for damages. It may be, therefore, that it has a wider application than section 264 of the Public Health Act, 1875.

(f) Therefore, this section will not apply to proceedings against a local authority under section 299 of the Public Health Act, 1875, *ante*, p. 394.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies— Section 2.
Repeal.

- (a.) The proceeding is to be commenced in any particular place ; or
- (b.) The proceeding is to be commenced within any particular time ; or
- (c.) Notice of action is to be given ; or
- (d.) The defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event ; or
- (e.) The defendant may plead the general issue ;

and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.(a)

(a) The schedule contains a long list of repealed enactments, and is here set out only in so far as it repeals portions of statutes included in the present work.

Section 224 of the Municipal Corporations Act, 1882, which is not included in the Schedule, is not repealed by this Act. *Humphriss v. Worwood*, 64 L. J. Q. B. 437.

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding. Saving as to
Scotland.

4. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-four. Commence-
ment.

5. This Act may be cited as the Public Authorities Protection Act, 1893. Short title.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.
26 Geo. 3, c. 71 - - in part.	The Knackers Act, 1786— in part ; namely,— Section eighteen.
6 Geo. 4, c. 78 - - in part.	The Quarantine Act, 1825— in part ; namely,— Section thirty-seven.
1 & 2 Will. 4, c. 32 - in part.	The Game Act, 1831— in part ; namely,— Section forty-seven.
38 & 39 Vict. c. 55 - in part.	The Public Health Act, 1875— in part ; namely,— Section two hundred and sixty-four.

THE HOUSING OF THE WORKING CLASSES ACT, 1894.

(57 & 58 VICT. CAP. 55.)

An Act to explain the provisions of Part II. of the Housing of the Working Classes Act, 1890, with respect to powers of borrowing.
[25th August, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Section 1.

Borrowing powers under a scheme for reconstruction.
53 & 54 Vict. c. 70.

1. For any purpose for which a local authority are, by a scheme for reconstruction duly sanctioned under Part II. of the Housing of the Working Classes Act, 1890, or by the order sanctioning the scheme, authorised to borrow, the authority shall have power and shall be deemed always to have had power to borrow in like manner and subject to the like conditions as they may borrow under section forty-three of that Act for the purpose of raising the sums required for the purchase money or compensation therein mentioned, and sections forty-three and forty-six of that Act shall apply accordingly.

Short title.

This Act enables a local authority to borrow for the purposes of a scheme of reconstruction under section 39 of the principal Act, *ante*, p. 627.

Sections 43 and 46 (8) of the principal Act in terms enable a local authority to borrow only for the purposes of raising sums required for purchase money or compensation.

2. This Act may be cited as the Housing of the Working Classes Act, 1894.

THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. CAP. 73.)

An Act to make further provision for Local Government in England and Wales.
[5th March, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

PARISH MEETINGS AND PARISH COUNCILS(a).

Constitution of Parish Meetings and Parish Councils.

* * * * *

(a) This part of this Act is outside the scope of the present work, except in so far as express reference is therein made to district councils, or in so far as the powers of a parish council may be conferred on an urban district council under section 33, *post*. Only those portions of this part which concern district councils are here inserted.

4. (1.) In any rural parish in which there is no suitable public room **Section 4.** vested in the parish council or in the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose of— Use of school-room.

- (a.) The parish meeting or any meeting of the parish council ; or
- (b.) Any inquiry for parochial purposes by the Local Government Board or any other Government Department or local authority ; or
- (c.) Holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the Allotments Act, 1890, or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act ; or 53 & 54 Vict. c. 65.
- (d.) The candidature of any person for the district council or the parish council ; or
- (e.) Any committee or officer appointed, either by the parish meeting or council or by a county or district council, to administer public funds within or for the purposes of the parish

any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate :

Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house, nor authorise any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

The above sub-section only concerns district councils to the extent of clauses (d) and (e). Possibly the latter clause may apply to meetings of a parochial committee appointed under section 202 of the Public Health Act, 1875, *ante*, p. 273.

(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the furniture of the room, or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting, or parish council, or inquiry, as the case may be ; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

As to the costs of inquiries by the Local Government Board, see section 294 of the Public Health Act, 1875, *ante*, p. 389.

(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a school-house, by the Education Department, in the case of a room used for the administration of justice or police, by a Secretary of State, and in any other case by the Local Government Board.

Section 5.

Powers and Duties of Parish Councils and Parish Meetings.

Parish council
to appoint
overseers.

5. (1.) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians.

In an urban district the Local Government Board may, under section 33, *post*, p. 730, confer on the urban district council or on some other representative body within the district the power of appointing overseers and assistant overseers, and of revoking the appointment of assistant overseers. Where no such order is made overseers and assistant overseers in urban parishes will be appointed as heretofore.

(2.) As from the appointed day—

- (a.) The churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and
- (b.) References in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and
- (c.) The legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Where an order is made under section 33, *post*, p. 730, it may be possible to apply this sub-section so as to confer upon the urban district council the powers of the overseers and the parish council, and so as to make the churchwardens cease to be overseers.

Transfer of
certain powers
of vestry and
other authori-
ties to parish
council.

6. (1.) Upon the parish council of a rural parish coming into office, there shall be transferred to that council :—

- (a.) The powers, duties, and liabilities of the vestry of the parish except—
 - (i.) So far as relates to the affairs of the church or to ecclesiastical charities ; and
 - (ii.) Any power, duty, or liability transferred by this Act from the vestry to any other authority :
- (b.) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subse-

quently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate. Section 6.

(c.) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—

(i.) Appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate; and

(ii.) The provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto; and

(iii.) The holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them;

(d.) The powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property.

The provisions of the above sub-section do not concern district councils, except in so far as they give to parish councils powers which may be conferred on urban district councils under section 33, *post*, p. 730.

(2.) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890, but without prejudice to the powers of such householders. 53 & 54 Vict.
c. 70.

As to unhealthy dwellings, section 31 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), *ante*, p. 618, provides that any four or more householders living in or near to any street may "complain in writing to the medical officer of health" of a sanitary district "that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation." The medical officer is thereupon bound to inspect the house forthwith and transmit to the local authority (the district council under this Act), the complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, he is to represent the same to the local authority whose duty it will then be to take the steps directed by the following sections of the Act.

As to obstructive buildings, section 38, sub-sections (1) and (2), of the same Act empowers any four or more inhabitant householders of a sanitary district to make to the local authority (the district council) a representation as respects any building to the effect that although not in itself unfit for human habitation, it "is so situate that by reason of its proximity to or contact with any other buildings, it causes one of the following effects, that is to say: (a) it stops ventilation or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or (b) it prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings," and that, in their opinion, it is expedient that it should be pulled down. The district council is thereupon bound to have a report made as to the circumstances of the building, and to consider the representation and the report, and may proceed under the same section for the demolition of the obstructive building.

Under section 45 of the same Act, a copy of any complaint or representation made

**Note to
Section 6.**

by householders as to unhealthy dwelling-houses or obstructive buildings is to be forwarded by the district council to the county council, who may exercise the powers of the district council in the event of the failure of the latter body to take proceedings in a proper case.

A parish council is authorised by the Act to make similar complaints and representations to those which may be made under the sections above referred to by four or more householders, and it is to be inferred that the same consequences will follow where the parish council acts under the provision in the text as follow a complaint on representation made by such householders. The rights of those householders under the Act of 1890 are not interfered with by this section.

(3.) A parish council shall have the same power of making a representation with respect to allotments, and of applying for the election of allotment managers, as is conferred on parliamentary electors by the Allotments Act, 1887, or the Allotments Act, 1890, but without prejudice to the powers of those electors.

50 & 51 Vict.
c. 48.
53 & 54 Vict.
c. 65.

Under section 2 of the Allotments Act, 1887, *post*, a representation may be made to the sanitary authority (the district council under this Act) by any six registered parliamentary electors or ratepayers resident in some parish within the rural district, to the effect that the circumstances of the parish are such that it is the duty of the sanitary authority to take proceedings under that Act for the provision of allotments. The parish council are empowered by the text to make a similar representation. If the sanitary authority fail to carry into effect the provisions of the Act, a petition to the county council may be presented under the Act of 1890 by the persons above mentioned, and the county council may take over the powers and duties of the sanitary authority under the Act of 1887. The parish council will, apparently, have power to make a similar petition, such a proceeding being, it is thought, covered by the word "representation" used in the text.

Under section 9 of the Act of 1887, a petition may be made to the sanitary authority by a number not being less than one-sixth of the whole number of electors of allotment managers in the parish, praying for the election of such allotment managers, and, thereupon, the sanitary authority are to order such election. The same section provides for the method of election of allotment managers, the electors being the persons registered in any list of parliamentary electors for the parish as entitled to vote at an election of a member to serve in Parliament. It is not obvious why this power should be expressly conferred upon a parish council, having regard to the next sub-section, which practically transfers to the council the powers and duties of the allotment managers.

(4.) Where any Act constitutes any persons wardens for allotments, or authorises or requires the appointment or election of any wardens, committee, or managers for the purpose of allotments, then, after a parish council for the parish interested in such allotments comes into office, the powers and duties of the wardens, committee, or managers shall be exercised and performed by the parish council, and it shall not be necessary to make the said appointment or to hold the said election, and for the purpose of section sixteen of the Small Holdings Act, 1892, two members of the parish council shall be substituted for allotment managers or persons appointed as allotment managers.

* * * * *

Additional
powers of
parish council.

8. (1.) A parish council shall have the following additional powers, namely, power—

- (a.) To provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and
- (b.) To provide or acquire land for such buildings and for a recreation ground and for public walks; and

- (c.) To apply to the Board of Agriculture under section nine of the Commons Act, 1876 ;(a) and Section 8.
39 & 40 Vict.
c. 56.
- (d.) To exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections ; and 38 & 39 Vict.
c. 55.
53 & 54 Vict.
c. 59.
- (e.) To utilize any well, spring, or stream within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person ;(b) and
- (f.) To deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority ; and
- (g.) To acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof ;(c) and
- (h.) To accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof ; and
- (i.) To execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity ; and
- (k.) To contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

Most of the powers mentioned in this sub-section are already possessed by district councils. With regard to such as are not possessed by such councils, that is, under clauses (c), (e), (g), (h), (i), and (k), an urban district council may acquire them by order under section 33, *post*, p. 730.

(a) See this section in the Appendix, *post*.

(b) It is not clear that this power if conferred on an urban authority would increase the powers already possessed by such an authority under section 51 of the Public Health Act, 1875, *ante*, p. 76.

(c) It may be important for an urban authority to possess this power.

(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act

Section 8. applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

Wider powers than those conferred by this sub-section are already possessed by urban district councils under section 175 of the Public Health Act, 1875, *ante*, p. 244.

(3.) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

This saving clause is inserted in consequence of the powers conferred upon the parish council with regard to water supply, and the sanitary works mentioned in sub-section (1), (*e*) and (*f*), *ante*, p. 703.

(4.) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.

Notice of applications under the Commons Act, 1876, in relation to suburban commons must be given to urban sanitary authorities under section 8 of that Act, in the Appendix, *post*.

Powers for
acquisition of
land.

38 & 39 Vict.
c. 55.

50 & 51 Vict.
c. 48.
53 & 54 Vict.
c. 65.

9. (1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

Under the Allotments Act, 1887, *post*, the authority to apply for compulsory powers for the taking of land for allotments is the district council, and the procedure is by way of provisional order made by the county council requiring confirmation by Parliament. Under the Allotments Act, 1890, *post*, the persons who under the Act of 1887 may set the district council in motion, viz., in a rural parish any six parliamentary electors or ratepayers resident in the parish may, if dissatisfied with the proceedings of a district council after a representation made to that body under the earlier Act, petition the county council. The county council may thereupon, after the inquiry required by the Act, make a provisional order upon the recommendation of their standing committee (appointed under section 3 of that Act) without any application by the district council under the Act of 1887.

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Section 9.

Under section 6, sub-section (3) of this Act, *ante*, p. 702, a parish council has the same power of making a representation under either of these Allotments Acts as is by either of those Acts conferred upon parliamentary electors.

If the county council are satisfied as to the matters referred to above, they are to proceed to give notices and to hold a public inquiry; it may be assumed that the notices will be given before the inquiry is held, though this, the natural, order of events is inverted in the text. The inquiry and the notices are to be "such as may be prescribed," *i.e.*, by order of the Local Government Board. See section 75, *post*. But the inquiry must be public and must be made in the parish, and the notices must be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken.

The inquiry will be held under the provisions of section 3 of the Allotments Act, 1890, *post*, which, by sub-section (13), *infra*, is incorporated with this section, *viz.*, by such one or more members of the standing committee of the county council established under that section, or such officer of the county council or other person as the standing committee may appoint to hold the same. The person holding the inquiry will have the same powers as an inspector of the Local Government Board when holding an inquiry, and the county council may make orders as to the costs of such inquiries. See sub-sections (8) and (12), *infra*, and Public Health Act, 1875, sections 294—296, *ante*, p. 389.

All persons interested may attend the inquiry by themselves or their agents, and support or oppose the taking of the land. Counsel and expert witnesses are not to be heard except in such cases as may be prescribed. Sub-section (11), *post*, p. 708.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

An order made under this provision will be provisional only and cannot be acted on until it is confirmed under sub-section (7), *post*, p. 706.

This sub-section must be read with sub-section (10), *post*, p. 708; the order is to incorporate not only the Lands Clauses Acts but sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, and may make the "necessary adaptations" of those provisions: further, any question of disputed compensation is to be dealt with under section 3 of the Allotments Act, 1887. As to this, see note on sub-section (10), *infra*.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

This sub-section gives a right of appeal to the Local Government Board in any case where a county council has refused to make the order referred to in the last sub-section. It would seem that this right of appeal will exist where the county council has refused to direct an inquiry under sub-section (3), not being satisfied as to the existence of the conditions in that sub-section referred to, as well as when after such inquiry they have refused to make the order.

The appeal is to be by the parish council or the district council; by the district council if the petition has been presented by them under the Allotments Act, 1887; by the parish council if they have made the representation under sub-section (2) of this section or, apparently, if the petition has been made under the Allotments Act, 1890, by the persons in that Act authorised to petition the county council as to an alleged default of the district council in the provision of allotments. (See note on sub-section (3), *ante*.) No right of appeal is given by the sub-section now under consideration to those persons, but as this section applies to any proceedings under

**Note to
Section 9.**

the Allotments Acts, 1887 and 1890, and the parish council is authorised to appeal in all cases except where the district council may do so, it appears that upon a refusal of the county council to make an order in proceedings which have been initiated by parliamentary electors under the Act of 1890, the parish council may take up the matter after the refusal has been made by the county council, and may appeal under this sub-section.

It will be noticed that no right of appeal is given under this sub-section *against* an order made by a county council under the preceding sub-section. The course for any person to pursue who considers himself aggrieved by the making of such an order will be to memorialize the Local Government Board against the confirmation of the order under sub-section (7), *infra*.

The petition to the Local Government Board should set out the original representation or petition to the county council, and any evidence in support of it upon which the petitioners rely, whether it has been already adduced at an inquiry by the county council or not. Upon the presentation of such a petition the Board will, it appears, be bound to hold a local inquiry, and to any such inquiry, sections 293 to 296 and sub-sections (1) and (2) of section 297 of the Public Health Act, 1875, will apply (see sub-section (8), *infra*) ; it will be conducted by an inspector of the Board.

After the inquiry has been held the Board may make the order, but it will be provisional only until confirmed under sub-section (7), and will stand on the same footing as an order by the county council made under sub-section (4). Any order of the Local Government Board under this sub-section putting in force compulsory powers of purchasing land, must be an order "overruling the decision of the county council," and must, therefore, in all cases, be laid before Parliament.

The Act is silent as to when such an order is to be laid before Parliament. Neither is any power given to Parliament to deal with such an order, similar to the power which is given to Parliament by section 25 of the Judicature Act, 1875, to present an address praying for the annulment of rules of court laid before them under that section. Apparently, the intention of the present provision is that such an order shall merely be brought to the attention of Parliament.

The laying of the order itself before Parliament is in addition to the report by the Local Government Board of proceedings under this section, which is required by section 10, sub-section (11), *post*.

A similar provision for the laying of orders before Parliament is contained in the Local Government Act, 1888, s. 57, *ante*, p. 516.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

The "order" here referred to includes an order made by the county council or by the Local Government Board under the preceding sub-sections. As to the presentation of memorials and the final confirmation of orders, see the next sub-section. The copy of the order and the statement referred to in this sub-section is to be served "in the prescribed manner," viz., prescribed by the Local Government Board (section 75). No provision is made by the Act as to the persons upon whom it is to be served, but it may be presumed that the Local Government Board will prescribe that it shall be served upon the promoters of the application, and upon the owners, lessees, and occupiers of the land affected.

No order can be made by the Local Government Board under the last sub-section unless notice of its purport has been previously given in a local newspaper circulating in the district to which it relates (Public Health Act, 1875, s. 297, sub-section (1), incorporated by sub-section (8), *infra*).

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with ; and if the Board are satisfied that this has been done, then, after the prescribed period—

Section 9

- (a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order :
- (b.) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order :
- (c.) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

The period for which the order is to lie at the Local Government Board unconfirmed is to be prescribed. During this period the Board will inquire as to whether the provisions of this section and the prescribed regulations have been in all respects complied with. If the Board are not satisfied as to this, it may be assumed that they will acquaint the promoters of the order of that fact, and the promoters, if unable to satisfy the Board as to the question, will be obliged, if they desire to persist in their proceedings, to commence them *de novo*, or, at least, from the point at which the provisions of the section or the regulations were infringed.

If no memorial has then been presented the Board are bound, after the prescribed period has expired—and “after” must be taken to mean “immediately after”—to confirm the order.

At any time during the prescribed period a memorial may be presented to the Board by “some person interested” praying that the order shall not become law without further inquiry. See last sub-section. The expression, “person interested,” would include the owner, lessee, or occupier of the land proposed to be taken, and any other person who has a definite right of property in that land. The memorial should state the course of the proceedings which had been taken, and the evidence relied upon in support of the prayer of the memorial. If a memorial be presented, it will be the duty of the board to hold a local inquiry (as to which see note on sub-section (5), *ante*, p. 706, and sub-section (8), *infra*) ; this inquiry must, it seems, be held in all cases where a memorial has been presented, even though the provisional order has been made by the Board itself upon appeal from the county council under sub-section (5). This second inquiry by the same body seems to be an unnecessary proceeding, but the language of the present sub-section and of sub-section (5) seems to leave no option to the Board, for the provisions of this section, including sub-section (7) (b), now under consideration, are to apply to an order made by the Board under sub-section (5), is “as if the order had been made by the county council.” After (*i.e.*, “immediately after”) such inquiry the Board must either confirm the order with or without amendment or disallow it.

This decision is final. If such confirmation is made, the order, and if amended as so amended, becomes final, and has the effect of an Act of Parliament. Once confirmed, it cannot be questioned on the ground that the requirements of this Act have not been complied with, or that it is not within the powers of the Act.

The effect of the provisions of this and the preceding sub-sections is to substitute in the case of land which is required for the purposes mentioned in this section, for the established procedure by which land is acquired compulsorily for other public or *quasi* public purposes, viz. : by means of a provisional order, made by the county council or the Local Government Board, and confirmed by Act of Parliament, a method which will undoubtedly be cheaper where the opposition to the taking of the land is not active, and which will at the same time give opportunity to persons objecting to the taking of the land of putting their objections before competent tribunals, and carrying their opposition as far as is justifiable for the protection of their interests.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local

Section 9. inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

See these sections, *ante*, pp. 390, 391.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways (Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a.), (b.), and (c.) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

8 & 9 Vict.
c. 20.

The Lands Clauses Acts are set out in the Appendix, *post*.

Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, relate to the rights of owners of mines and minerals lying under or near a railway. These provisions are to be incorporated in orders made by a county council or of the Local Government Board under this section, "with the necessary adaptations."

The incorporated provisions of the Allotments Act, 1887, will be found in the Appendix, *post*. The modification of those provisions by the proviso to this section is of great practical importance. Compare the similar provision in section 21 (1) (a) and section 41 (2) (a) of the Housing of the Working Classes Act, 1890, *ante*, pp. 612, 630.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

"Prescribed" means prescribed by order of the Local Government Board; see section 75, *post*.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

By the next sub-section, section 3 of the Allotments Act, 1890, is incorporated with this section as to the taking of land, whether for allotments or otherwise, and is to apply with the "prescribed adaptations." That section requires a county council to appoint a standing committee for the purposes of that Act or the principal Act (the Allotments Act, 1887), and sub-section (4) provides that "an inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee or such officer of the county council or other person as the standing committee may appoint to hold the same." The person or persons, therefore, holding a public inquiry on behalf of a county council for the purpose of this section will be appointed by the standing committee of the county council. They are to have the powers of inspectors of the Local Government Board. As to these powers, see section 296 of the Public Health Act, 1875, *ante*, p. 390.

(13.) Sub-section (2) of section two, if the land is taken for allotments, **Section 9.** and whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly. ^{50 & 51 Vict. c. 48.}
^{53 & 54 Vict. c. 65.}

The incorporated provisions of the Allotments Act, 1887 and 1890, will be found in the Appendix, *post*.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

See section 12 of the Allotments Act, 1887, in the Appendix, *post*, as to common pasture.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

This section can only apply to a county borough in so far as it relates to the acquisition of land by a district council, *i.e.*, for allotments. It should be mentioned that the Local Government Act, 1888, s. 34, sub-sect. (7), provides that the powers and duties of the county authority under the Allotments Act, 1887, shall, as respects a county borough, continue to be exercised and performed by the Local Government Board.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

See, further, as to expenses of inquiries by county councils, section 72, *post*, p. 763.

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13. (1.) The consent of the parish council and of the district council shall be required for the stopping, in whole or in part, or diversion, of a public right of way within a rural parish, ^(a) and the consent of the parish council shall be required for a declaration that a highway in a rural parish is unnecessary for public use and not repairable at the public expense, ^(b) and the parish council shall give public notice of a resolution to give any such consent, and the resolution shall not operate—

^{Footpaths and roads.}

Section 13.

- (a.) Unless it is confirmed by the parish council at a meeting held not less than two months after the public notice is given ; nor
- (b.) If a parish meeting held before the confirmation resolve that the consent ought not to be given.

(a) In considering this section and the notes thereto it should be borne in mind that the word "highways" in the Highway Acts is to be understood to mean "all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements." Highway Act, 1835, s. 5.

Under the Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 84 to 92, if the vestry of a parish (*i.e.*, a meeting of the inhabitants who are liable to contribute to the expenses of repairing the highway in question (*Wright v. Overseers of Frant*, 32 L. J. M. C. 204 ; 8 L. T. (N.S.) 455 ; 11 W. R. 883 ; 27 J. P. 645 ; 10 Jur. (N.S.) 39 ; 4 B. & S. 118), deems it expedient that a highway should be stopped up or diverted, the chairman of the meeting is to direct the surveyor of highways to apply to two justices to view the same ; and "any other party" who desires to stop up or divert a highway may require the surveyor to give notice to the churchwardens to call a vestry meeting and submit to them the wish of such person : if they do not agree to the proposal there is an end of the matter ; if they do agree the surveyor is to apply to the justices to view, as before. If upon such view it appears to the justices that the way may be diverted with advantage, or is unnecessary, they must direct the surveyor to fix notices at the place and by the side of each end of the highway from whence it is proposed to be diverted or stopped up, and to advertise the same notice in a local newspaper for four successive weeks, and to fix the like notice upon the church doors of every parish in which the highway lies for four successive Sundays. As to what notices are sufficient, see *Reg. v. Justices of Surrey*, L. R. 5 Q. B. 466 ; 39 L. J. M. C. 145 ; *Reg. v. Justices of Surrey* [1892], 1 Q. B. 867 ; 62 L. J. M. C. 153 ; 66 L. T. (N.S.) 578 ; 40 W. R. 500 ; 56 J. P. 695. Upon proof that all the requirements of the Act have been complied with the justices grant their certificate, stating their reasons for thinking that the highway should be diverted or is unnecessary, and that certificate is enrolled at a quarter sessions. As to the matters to be stated in the justices' certificate, see *Reg. v. Wallace*, 4 Q. B. D. 641 ; 40 L. T. (N.S.) 518 ; 43 J. P. 493. Any person thinking himself aggrieved by the proposed diversion or stopping up of the highway may appeal to the quarter sessions by giving to the surveyor fourteen days' notice in writing of such appeal (*ib.* s. 88, and 12 & 13 Vict. c. 45 : see *Reg. v. Maule*, 41 L. J. M. C. 47 ; 23 L. T. (N.S.) 859 ; 35 J. P. 596), and upon such appeal a jury at the sessions will determine the questions whether the proposed diversion will be more commodious or whether the highway is unnecessary, and whether the appellant would be aggrieved by the diversion or stopping up, and if the appeal is upon the ground of defects in the certificate of the justices, the court will decide as to its sufficiency. *Reg. v. Justices of Worcestershire*, 3 E. & B. 447 ; 23 L. J. M. C. 113 ; 18 Jur. 424 ; 2 C. L. R. 1333. If there is no appeal, or if the appeal fails, the court of quarter sessions will make an order for the diversion or stopping up of the way. If the appeal succeeds, no such order will be made.

(b) The proceedings relating to a declaration that a highway is unnecessary for public use and not repairable at the public expense will be found in the Highway Act, 1864 (27 & 28 Vict. c. 101), s. 21, and in the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 24. Under the former enactment such proceedings can only be taken by a highway board (*i.e.*, a board forming the highway authority for a highway district established by an order of quarter sessions under the Highway Act, 1862 (25 & 26 Vict. c. 61)). The proceedings are commenced by a direction by the board to the district surveyor to apply to two justices to view the highway, and thereupon the proceedings are to go on in like manner as proceedings under the Highway Act, 1835, for the stopping up or diversion of a highway with the necessary variations.

Under the Act of 1878 the proceedings can be taken by any authority liable to keep the highway in question in repair, and differ from those which may be taken under the Act of 1864. The highway authority may make an application to the court of summary jurisdiction of the petty sessional division in which any parish in which the highway lies is situate that two justices of the court shall view the highway. If on such view the court is of opinion that the application should be proceeded with, they must appoint a time and place for hearing objections to the

**Note to
Section 13.**

application, such appointment to be made by a month's public notice, and also by a month's notice to the owners and occupiers of all lands abutting upon the highway in question. The applicant authority must also give public notice of the appointed time and place by advertisement in a local newspaper once in each of the four weeks preceding the hearing, and by causing a copy of such notice to be affixed fourteen days before the hearing to the doors of every church and chapel in the parish in which the highway is situate, or in a conspicuous position near the highway, and the application cannot be entertained by the court unless the giving of this public notice is proved to its satisfaction. On the day and at the place appointed the court must hear any objections, and must either dismiss the application or make an order declaring the highway unnecessary for public use and that it ought not to be repaired at the public expense. If such an order is made the expenses of repairing the highway will cease to be defrayed out of any public rate. An appeal lies from such an order to quarter sessions. Under both Acts (1864 and 1878) a court of quarter sessions, upon the application of any person interested in the maintenance of the highway in respect of which such an order has been made and upon certain evidence, may direct that the liability of such highway to be maintained at the public expense shall be revived.

(2.) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

Public footpaths are of course, under the control of the highway authority of the place in which they are situate. That authority (which will, where the provisions of section 25 as to highways have come into operation, be the district council) is to remain liable for the repair and maintenance of the class of footpaths mentioned in the text, even where a parish council has undertaken to repair and maintain them. Footpaths at the side of a public road are excepted from the power here given to a parish council.

14. (1.) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

Public
property and
charities.

The powers hereby conferred upon a parish council may be conferred upon an urban authority by order under section 33, *post*, p. 730.

(2.) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers.

The expression "parochial charity" is defined by section 75 to mean "a charity, the benefits of which are, or the separate distribution of the benefits of which is, confined to inhabitants of a single parish or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes."

**Note to
Section 14.**

"Ecclesiastical charity" is also defined by section 75, *post*, p. 765.

The powers of a parish council under this sub-section may also be conferred on an urban authority under section 33, *post*, p. 730.

(3.) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the rate-payers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this sub-section shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

The powers of a parish council under this sub-section may also be conferred on an urban authority under section 33, *post*, p. 730.

(4.) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

(5.) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

(6.) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the church-wardens, and the names of the beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

(7.) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one-half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8.) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or in the case of a charity founded

23 & 24 Vict.
c. 136.

18 & 19 Vict.
c. 124.

before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors. Section 14.

(9.) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

15. A rural district council may delegate to a parish council any power which may be delegated to a parochial committee under the Public Health Acts, and thereupon those Acts shall apply as if the parish council were a parochial committee, and where such district council appoint a parochial committee consisting partly of members of the district council and partly of other persons, those other persons shall, where there is a parish council, be or be selected from the members of the parish council. Delegated powers of parish councils.

The Public Health Act, 1875, s. 202, *ante*, p. 273, enables a rural sanitary authority (including a committee of such authority formed under section 201) to appoint a parochial committee, consisting wholly of members of such authority or committee, or partly of such members and partly of other persons liable to contribute to the poor rate of the parish, and qualified in such other manner as the authority forming the parochial committee may determine. The rural authority or their committee may from time to time add to or diminish the number of members, or otherwise alter the constitution of any parochial committee or may dissolve it. The parochial committee is subject to any regulations and restrictions imposed by the authority which formed it, but otherwise may exercise any of the powers of the rural sanitary authority within the parish which are delegated to it. The committee may be empowered to incur expenses not exceeding the amounts prescribed by the authority which formed it. It must report its expenditure to such authority, and the amount so reported, if legally incurred, is to be discharged by the authority. The provision in the text enables a rural district council to delegate its powers to the parish council to the same extent as it could to a parochial committee, and where a district council appoint a committee, consisting partly of members of their own body and partly of other persons, those other persons must be the parish council or some of its members.

As to committees and joint committees of parish and district councils, see *post*, sections 56, 57, pp. 752, 753.

16. (1.) Where a parish council resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty to enforce, and have failed so to do, (a) or that they have failed to maintain and repair any highway in a good and substantial manner, (b) the parish council may complain to the county council, and the county council, if satisfied after due inquiry that the district council have so failed as respects the subject-matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly. Complaint by parish council of default of district council.

(a) Up to this point the section follows the words of section 299 of the Public Health Act, 1875, *ante*, p. 394. See also section 7 of the Housing of the Working Classes Act, 1885, *ante*, p. 483.

(b) This is a new provision. It affords a method of enforcing the duty of repairing a highway in addition to that given by the Highway Act, 1878, s. 10, *post*. On a complaint under this section, the county council will apparently have to decide whether the district council are liable to repair if the liability is disputed.

Section 16.

38 & 39 Vict.
c. 55.

(2.) Upon any complaint under this section the county council may, instead of resolving that the duties and powers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board.

See the sections above referred to, *ante*, pp. 394—397.

It will be seen that under section 299 the complaint of a default by a district council as to the matters specified in that section may be made to the Local Government Board by any person. The remedy under that section is in no way affected by the above two sub-sections. But a further remedy is given; a parish council may make a complaint to the county council as to the same matters and also as to a default in maintaining and repairing a highway; and by section 19, sub-section (8), in a parish where there is no parish council, the same power of making a complaint is conferred upon the parish meeting. Where such a complaint has been made to a county council that body may act in one of two ways: (i.) they may, under sub-section (1), resolve to exercise the powers of the district council in respect of the matter of the complaint. In this case the provisions of section 63, *post*, p. 758, will apply; notice of the resolution of the county council is to be sent to the district council and to the Local Government Board, the county council may raise a loan for the purpose of the powers transferred, and their expenses are to be a debt from the district council to the county council; or (ii.) they may, instead of taking over the duties and powers of the defaulting district council, take similar measures to those which may be taken by the Local Government Board under section 299 of the Public Health Act, 1875, for compelling the district council to perform their duty in the matter of the complaint; if they adopt this course, they are to have the powers of the Local Government Board under sections 299 to 302 of the Act referred to.

Section 63, sub-section (2), makes provision for the manner of making these complaints in a rural district which is situate in more than one county; the county council to which the parish council is to make the complaint is the council of the county in which the parish is situate; if the subject-matter of the complaint affects any other county, the complaint is to be referred to a joint committee of the councils of the counties concerned. If the joint committee reports in favour of action being taken, that committee and not the county council to which the complaint was made would be the body to act upon it under this section.

(3.) Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.

The powers of a district council as to sewerage and water supply are contained in the Public Health Act, 1875, sections 13 to 34, and 51 to 70, *ante*, pp. 32, 76.

The expression "contributory place" is explained in section 229 of the same Act, *ante*, p. 308. It includes a parish, part of a parish where the residue is included in an urban district or a special drainage district, and a special drainage district.

It may be presumed that where a notice of a plan for sewerage or water supply has been given to a parish council under this clause, that council will have power to state objections to those plans, and, generally, to make representations to the district council regarding them.

Parish officers
and parish
documents.

17.

(5.) When a parish council act as a parochial committee by delegation from the district council, they shall have the services of the clerk of the district council unless the district council otherwise direct.

As to a parish council as such acting as a parochial committee by delegation from the district council, see *ante*, section 15 and note.

The duties of clerk to a rural sanitary authority are performed by the clerk to the guardians of a union, except where he is unable or unwilling to act ; in which case another person is appointed. See the Public Health Act, 1875, s. 190, *ante*, p. 263. Any person who is at the "appointed day" filling the office of clerk to the rural sanitary authority will, under section 81, *post*, p. 768, become clerk to the district council.

Note to
Section 17.
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(8.) The custody of the registers of baptisms, marriages, and burials, and all other books and documents containing entries wholly or partly relating to the affairs of the Church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this sub-section, and any difference as to custody or access shall be determined by the county council.

The powers of a parish council under this sub-section may be conferred on an urban authority under section 33, *post*, p. 730.

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PART II.

GUARDIANS AND DISTRICT COUNCILS.

20. As from the appointed day the following provisions shall apply to boards of guardians :—

Election and
qualification
of guardians.

Before the passing of this Act the guardians of a union were the rural sanitary authority for the rural sanitary district of the union. Under this Act the rural district councillors are the guardians for the parishes they represent, but the two bodies are now entirely distinct. It is necessary, however, to include this section in the present work, for by section 24 (4), *post*, p. 721, the provisions of the Act with respect to the qualification, election, term of office, and retirement of guardians are to apply to district councillors of a rural district.

- (1.) There shall be no *ex officio* or nominated guardians :
- (2.) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, (a) or has during the whole of the twelve months preceding the election resided in the union, (b) or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not, (c) is qualified to be elected a councillor for that borough, (d) and no person shall be disqualified by sex or marriage for being elected or being a guardian. (e) So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed : (f)

(a) The parochial electors of a parish are the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to that parish. See section 2 (1), of this Act. See also section 75, *post*, p. 764, as to the expression "parochial elector" when used with reference to a parish in an urban district.

**Note to
Section 20.**

(b) It has been said that the meaning of the word "residence" must be determined with reference to the purpose of the statute in which it is used. *Blackwell v. England*, 27 L. J. Q. B. 124. In the text it appears to mean a personal dwelling within the union, as distinguished from the mere occupation of property. For some purposes a person may have more than one residence; thus he may have houses in different places, each of which may be called his residence (see *Walcot v. Boyfield*, 1 Kay 534; 18 Jur. 570); but it may be doubted whether, for purposes of this Act, a man can reside in more than one place.

Further, the residence must be during the whole of the twelve months preceding the election. This provision resembles that in section 9 of the Municipal Corporations Act, 1882, and as but for the passing of the 48 Vict. c. 9 the letting of a house furnished for any part of the twelve months disqualified a person from being a burgess, so any similar letting would disqualify a person from being elected or being a guardian if his only qualification were residence.

(c) The provisions of this Act relating to guardians apply to county boroughs. See section 30, *post*, p. 730.

(d) The qualification of the councillor of a borough depends upon sections 11 and 12 of the Municipal Corporations Act, 1882. See the text of these sections in "Arnold's Municipal Corporations," 4th edit., p. 18, or in "Macmorran's Local Government Act, 1888," p. 211.

Referring to this sub-section the Local Government Board have expressed an opinion in the following terms:—

"There are three alternative qualifications for the office of guardian mentioned in section 20 (2) of the Act.

"A person will be qualified if—(1) he is a parochial elector of some parish within the poor law union, or (2) he has during the whole of the twelve months preceding the election resided in the union, or (3) in the case of a guardian for a parish wholly or partly situate within the area of a borough, he is qualified to be elected a councillor of that borough.

"Clergymen and ministers of a dissenting congregation could not, in view of section 12 (1) of the Municipal Corporations Act, 1882, possess the last of these qualifications, but they might be elected as guardians if they possessed either of the other qualifications above mentioned."

(e) A woman may be registered as a county elector, and, if so registered, will be a parochial elector. But hitherto a married woman has been incapable of exercising any franchise, even when she has been duly qualified in respect of the possession or occupation of property. See *Reg. v. Harrauld*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N.S.) 616; 20 W. R. 328; 46 J. P. 438. Under this Act, however, a married woman may be registered as a parochial elector (section 43, *post*, p. 737); and, if so registered, or if resident for the period required by the text, she will be qualified to be a guardian.

(f) The 4 & 5 Will. 4, c. 76, s. 38, provided that the Poor Law Commissioners (who were afterwards superseded by the Poor Law Board, and eventually by the Local Government Board) should determine the number of the guardians to be elected in each union, and should also fix the qualification without which no person should be eligible as such guardian, such qualification to consist in being rated to the poor rate of some parish or parishes in the union, but so as not to require a qualification exceeding the annual rateable value of 40*l.*, and should also determine the number of guardians to be elected for any one or more of such parishes, having due regard to the circumstances of each such parish, provided always that one or more guardians should be elected for each parish. The Poor Law Commissioners, Poor Law Board, or Local Government Board, as the case may be, accordingly fixed the amount required for the qualification of guardians in the several unions in England and Wales, and a list of the qualifications so fixed will be found in the "Poor Law General Orders," by Macmorran and Lushington, p. 41. By an Order of the Local Government Board made quite recently (the text of which is set out at 56 J. P. 778), the qualification of guardians in all unions was reduced to a uniform rateable value of 5*l.* Even that qualification is now abolished, and any person will be qualified to be a guardian without regard to whether he is rated or possesses property in the union or elsewhere.

The disqualifications for the office of guardian are set out in section 46, *post*, p. 739.

(3.) The parochial electors of a parish(a) shall be the electors of the guardians for the parish, and, if the parish is divided into

wards for the election of guardians, (b) the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward. Section 20.

(a) The parochial electors are the persons registered as provided by section 2 (1). See note (a) to the preceding sub-section.

(b) Under section 60 (*post*, p. 756), county councils have power to divide parishes into wards for the election of guardians and rural district councillors.

- (4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected.

This provision is applied to the election of rural district councillors by section 24 (4), *post*, p. 721.

- (5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board.

This provision is also applied to the election of rural district councillors by section 24 (4), *post*. Rules for the first elections were issued, and these, so far as they are still in force, will be found in Appendix II., *post*.

- (6.) The term of office of a guardian shall be three years, and one third, as nearly as may be, of every board of guardians shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows :—

(a.) Where the county council on the application of the board of guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the board of guardians for the union they may direct that the members of the board of guardians for that union shall retire together on the fifteenth day of April in every third year, and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties ;

(b.) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire, unless the county council, or a joint committee of the county councils, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct :

Section 79, *post*, p. 766, provides how the guardians and district councillors to retire in the first and second years after the first election are to be determined.

An order for simultaneous retirement can only be made at the instance of the board of guardians or of the rural district council as the case may be.

The application for the revocation of an order for simultaneous retirement may come either from the guardians or from the district council of a district within the union.

- (7.) A board of guardians may elect a chairman or vice-chairman, or both, and not more than two other persons, from outside their

Section 20.

own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the board. Provided that on the first election, if a sufficient number of persons who have been *ex officio* or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons.

This does not apply to a rural district council save as regards the qualification of the chairman. See section 24 (4), *post*, p. 721. As to the vice-chairman of a rural district council, see section 59 (2), *post*, p. 755.

Names of
county dis-
tricts and dis-
trict councils.

21. As from the appointed day,—

- (1.) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; but nothing in this section shall alter the style or title of the corporation or council of a borough:

Section 75, *post*, p. 764, incorporates section 100 of the Local Government Act, 1888, *ante*, p. 526, which defines an urban sanitary authority.

By section 6 of the Public Health Act, 1875, *ante*, p. 24, urban sanitary districts were of three kinds;—1st. Municipal boroughs; 2nd. Improvement Act districts; and 3rd. Local government districts. In these the urban sanitary authorities were respectively the borough council, the improvement commissioners, and the local board. The title of the borough and its council is not to be altered, but improvement Act districts and local government districts are henceforward to be called urban districts and the urban sanitary authorities over these are to be called urban district councils.

- (2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district:

A rural sanitary district consists of the area of a poor law union, exclusive of such parts thereof as are included in an urban district. Where a rural district formerly extended into two administrative counties, the part in each county is now in most cases a separate rural district. See section 24, sub-section (5), *post*, p. 721.

- (3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression “district council” shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression “county district” shall include every urban and rural district whether a borough or not:

It appears from section 35, *post*, p. 733, that this provision does not apply to a county borough, which is not, therefore, an “urban district.”

Chairman of
council to be
justice.

22. The chairman of a district council unless a woman or personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

Although under this Act a woman may be chairman of a district council, she is not to be a justice of the peace by virtue of this section.

A man may be personally disqualified to be a justice of the peace if he is sheriff (50 & 51 Vict. c. 55, s. 17). So if he is a bankrupt, unless the adjudication against him is annulled, or he obtains his discharge with a certificate that his bankruptcy was caused by misfortune; but this disqualification is not to exceed a period of five years from the date of the order of discharge (46 & 47 Vict. c. 52, s. 32; 53 & 54

Vict. c. 71, s. 9). And this disqualification does not apply to a person adjudged bankrupt before the passing of the 46 & 47 Vict. c. 52. *In re Pulborough School Board Election, Bourke v. Nutt* [1894], 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. (N.S.) 639; 42 W. R. 388; 58 J. P. 572; 10 T. L. R. 349. See also as to the removal of a justice from the commission for corrupt practices (46 & 47 Vict. c. 51, s. 38). Practising solicitors are also disqualified for being justices of any county in which they practice (34 Vict. c. 18).

The oaths to be taken by a justice are the oath of allegiance and the judicial oath (31 & 32 Vict. c. 72, s. 6). These oaths are usually taken at quarter sessions. See 34 & 35 Vict. c. 48. As to the power to affirm instead of taking the oath, see 31 & 32 Vict. c. 72, s. 11; 51 & 52 Vict. c. 46, s. 1.

The provision in the text is supplemental to that contained in section 2, sub-section 5, of the Local Government Act, 1888, which provides that the chairman of a county council shall be, by virtue of his office, justice of the peace for the county.

It will, no doubt, happen in many cases that the chairman of a district council is already a justice of the peace, but, making allowance for this, the result will be to add a large number of persons to the commission of the peace. It may be thought by some objectionable to have a number of persons acting as justices for limited periods, for the chairman of a district council will hold office only for a year. See section 59, sub-section (1), *post*, p. 755. A similar state of things already exists in the case of the mayor of a borough with regard to whom it is provided by section 155 of the Municipal Corporations Act, 1882, that he shall, by virtue of his office, be a justice of the peace for the borough, and shall, unless disqualified to be mayor, continue to be such justice during the year next after he ceases to be mayor. But while the mayor of a borough is a justice only for the borough, the text provides that the chairman of a district council, urban or rural, shall be a justice of the peace for the county. The mayor of a borough, other than a county borough, will thus be a county justice while he is mayor. For the year succeeding his mayoralty he will be a justice for the borough, but not for the county, and the chairman of every other district council will likewise, while chairman, be a county justice.

**Note to
Section 22.**

23. As from the appointed day, where an urban district is not a borough—

(1.) There shall be no *ex officio* or nominated members of the urban sanitary authority :

Constitution of district councils in urban districts not being boroughs.

For the meaning of the expression "urban district," see section 21, sub-section (1), and the notes thereto.

The cases in which there were *ex officio* or nominated members of an urban authority were very few in number. There were some provisions relating to "selected" members of the local boards in the Public Health Act, 1875, Schedule II., Rule 71. These related to boards formed before 1858, where the local board district included part of a borough, and a certain proportion of the members were appointed by the council of the borough. Since the passing of the Local Government Act, 1888, orders have been made under section 52 of that Act, *ante*, p. 515, dealing with such cases, and there are probably very few, if any, urban authorities to which the provision in the text can apply.

(2.) A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector^(a) of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district^(b) and no person shall be disqualified by sex or marriage for being elected or being a councillor. So much of any enactment whether in a public general or local and personal Act as relates to the qualification of a member of an urban sanitary authority shall be repealed.^(c)

(a) As to the parochial electors generally, see section 2, sub-section (1). As to the parochial electors in urban districts, see section 75, sub-section (2), *post*.

(b) Residence is an alternative qualification. A person may be qualified by residence though he is not a parochial elector. As to what is meant by residence, see the notes to section 20, sub-section (2), *ante*, p. 716.

Note to Section 23. (c) See the note to the corresponding provision in section 20, sub-section (2), *ante*, p. 716.

Hitherto members of local boards must have possessed certain property qualifications prescribed by the Public Health Act, 1875, Schedule II., Part 1, Rule 3. The qualification of improvement commissioners was generally prescribed by the local improvement Act in force in the district. These qualifications are now abolished.

- (3.) The parochial electors(*a*) of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward.(*b*)

(*a*) See note to the preceding sub-section.

(*b*) As to the lists and register of electors for wards, see section 44, sub-section (3), *post*, p. 738.

- (4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

This sub-section introduces an important change in the law. Urban authorities (other than borough councils) have hitherto been elected in manner provided by Schedule II. of the Public Health Act, 1875 ; the voters have been the persons registered as owners of property within the district, or their proxies, and the ratepayers ; and in both cases the number of votes to be given by a voter depended on the value of the property of which he was owner, or for which he was rated. The maximum number of votes was six, but a person who occupied his own property might vote both as owner and occupier. This scale of votes is now abolished and each elector will give one vote and no more for each of the number of persons to be elected. Thus if there are six vacancies and seven candidates an elector will be able to give one vote to each of six of the candidates.

- (5.) The election shall subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board :

The provisions of this Act above referred to are contained in this section and in section 48, *post*, p. 744. The election will be by ballot, and the provisions of the Ballot Act, the Municipal Corporations Act, and the Corrupt Practices Act, 1884, as to elections, as incorporated by the rules, will apply.

The rules at present in force are set out in Appendix II., *post*.

- (6.) The term of office of a councillor shall be three years, and one-third, as nearly as may be, of the council, and if the district is divided into wards, one-third, as nearly as may be, of the councillors for each ward, shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected councillors. Provided that a county council may on request made by a resolution of an urban district council, passed by two-thirds of the members voting on the resolution, direct that the members of such council shall retire together on the fifteenth day of April in every third year, and such order shall have full effect.(*a*)

(*a*) This provision is new ; see the corresponding enactments relating to guardians in section 20, sub-section (6), *ante*, p. 717. It is in the discretion of the county council to make the order, but they can only do so at the instance of the urban district council. It should be observed that the resolution of the urban council may be passed by a two-thirds majority of those voting. A resolution of two-thirds of the entire body is not required.

24. (1.) The district council of every rural district shall consist of a chairman and councillors, and the councillors shall be elected by the parishes or other areas for the election of guardians in the district. **Section 24.**
Rural district
councils,

The areas for the election of guardians are parishes, wards of parishes, and united parishes.

The parishes will include each part of a parish divided by virtue of this Act or by an order made under section 36, *post*, p. 733. Power is given to county councils and joint committees to divide parishes into wards, and to unite them for the purposes of the election of guardians and rural district councillors. Section 60, sub-sections (1) and (3), *post*, p. 756.

As to the meaning of the expression "rural district," see section 21, sub-section (2), *ante*, p. 718.

(2.) The number of councillors for each parish or other area in a rural district shall be the same as the number of guardians for that parish or area.

See the next sub-section under which the district councillors for any rural area are constituted the guardians for that area.

(3.) The district councillors for any parish or other area in a rural district shall be the representatives of that parish or area on the board of guardians, and when acting in that capacity shall be deemed to be guardians of the poor, and guardians as such shall not be elected for that parish or area.

It may here be pointed out that under this Act boards of guardians are composed of representatives of both urban and rural parishes. In an urban parish, however, both guardians and district councillors must be elected. But in a rural parish district councillors only are elected to represent the parish both on the rural district council and on the board of guardians. In other words a rural district councillor will also be a guardian for his parish.

It should be borne in mind that the guardians are a distinct body having duties and jurisdiction altogether different from the district council, and this will be the case even where the union and the rural district are co-extensive.

(4.) The provisions of this Act with respect to the qualification, election, and term of office and retirement of guardians, and to the qualification of the chairman of the board of guardians, shall apply to district councillors and to the chairman of the district council of a rural district, and any person qualified to be a guardian for a union comprising the district shall be qualified to be a district councillor for the district.

The provisions above referred to are contained in section 20, *ante*, p. 715. The disqualifications of a district councillor or guardian are set out in section 46, *post*, p. 739.

The chairman will be a justice of the peace by virtue of section 22, *ante*, p. 718.

The concluding words of the foregoing sub-section should be noticed. A person may be qualified as a parochial elector or resident, though his qualification is not within the district. It is sufficient if it is within a union comprising the district.

(5.) Where a rural sanitary district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall, save as otherwise provided by or in pursuance of this or any other Act, be as from the appointed day a rural district ;(a)

Provided that where the number of councillors of any such district will be less than five, the provisions, so far as unrepealed, of section nine

Section 24. of the Public Health Act, 1875, with respect to the nomination of persons to make up the members of a rural authority to five, shall apply, (b) unless the Local Government Board by order direct that the affairs of the district shall be temporarily administered by the district council of an adjoining district in another county with which it was united before the appointed day, and, if they so direct, the councillors of the district shall be entitled, so far as regards those affairs, to sit and act as members of that district council, but a separate account shall be kept of receipts and expenses in respect of the district, and the same shall be credited or charged separately to the district.

38 & 39 Vict.
c. 55.

(a) This provision will take effect without any order under section 36, *post*, but it is one of the cases which the county council, or rather the joint committee, are to take into consideration under that section. It would appear that under that section the county council may for special reasons direct that the rural district may remain in two counties notwithstanding the above provision.

(b) The provisions of section 9 of the Public Health Act, 1875 (*ante*, p. 27), in so far as they are not repealed by this Act, are as follows: "Where the number of elective guardians is less than five, the Local Government Board may, from time to time, by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated within the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority, but not further or otherwise." This power will have to be exercised unless a temporary order is made in manner provided by the text. Where such order is made the provision as to separate accounts will have to be attended to.

It should be noticed that section 36, sub-section (1), provides for the county council dealing with every rural district which will have less than five elected councillors. In such a case, unless the county council for special reasons otherwise direct, the district is to be united to some neighbouring district or districts. If no order for uniting the district with a neighbouring district is made, and the county council direct, under section 36, that such union shall not be made, the provision in the text will become applicable.

(6.) The said provisions of section nine of the Public Health Act, 1875, shall apply to the district council of a rural district to which they apply at the passing of this Act.

These provisions have been set out in the notes to the preceding sub-section

It should be observed that section 9 of the Act of 1875 is of wider application than the provision in sub-section (5), which is limited to cases in which rural districts are divided by reason of their being in two counties. The case to which section 9 applies is one in which one or more urban districts have been created within a union, leaving only a small rural district outside.

(7.) Every district council for a rural district shall be a body corporate by the name of the district council with the addition of the name of the district, or if there is any doubt as to the latter name, of such name as the county council direct, and shall have perpetual succession and a common seal, and may hold land for the purposes of their powers and duties without license in mortmain.

Urban district councils other than borough councils are incorporated by section 7 of the Public Health Act, 1875, *ante*, p. 26. Borough councils are incorporated by the Municipal Corporations Act, 1882.

The county council must give the rural district a name when the old district has been divided by or under this Act.

Hitherto there has been no need of this provision, for the board of guardians was already a corporate body, and by section 9 of the Public Health Act, 1875, the guardians were declared to be the same body as the rural sanitary authority.

25. (1.) As from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district, (a) and of any highway authority in the district, (b) and highway boards shall cease to exist, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority. (c) Provided that the council of any county may by order postpone within their county or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as the Local Government Board may on the application of such council allow.

Section 25.

Powers of district council with respect to sanitary and highway matters.

38 & 39 Vict. c. 55.

(a) These are the powers conferred upon a rural sanitary authority as such by the Public Health Acts and other statutes.

(b) The highway authorities here referred to are the surveyors of highway parishes, highway boards in highway districts, and rural sanitary authorities who have highway powers under the Highway Act, 1878. They include, also, in some cases, highway authorities under local Acts. See *Isle of Wight County Council v. Isle of Wight Highway Commissioners*, 59 J. P. 438; 72 L. T. (n.s.) 569.

(c) See these sections, *ante*, p. 157. The effect of their application is shortly as follows:—The rural district council will have all the powers, duties, and liabilities of surveyors of highways, and will further have all the powers which are given by the Highway Acts to the inhabitants in vestry assembled of any parish within that district. The inhabitants of the rural district are not to be liable for rates for roads without their district. The rural district council may agree with any person for the making of new public roads, and they are to have powers to agree for the making of public bridges under or above railways or canals. They are also to have power to enter into any agreements with any persons liable to repair any road with the view to the taking over by them of the maintenance, repair, cleansing, or watering of such street or road.

(2.) Where a highway repairable *ratione tenuræ* appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the district council to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.

The liability to repair a highway *ratione tenuræ* exists where an individual or corporation is bound to repair a highway by reason of a condition attached to his tenure of certain lands. The extent of that liability has been under discussion in some recent cases, such as *Reg. v. Barker*, 25 Q. B. D. 213; 59 L. J. M. C. 105; 62 L. T. (n.s.) 578; 54 J. P. 615. The text affords a simple remedy for enforcing the liability. There must be a report of a competent surveyor (not necessarily the surveyor of the district council), and there must be a failure on the part of the person liable to put the highway into proper repair. The person liable is probably the owner of the land, though, hitherto, it has been necessary to indict the occupier. See *Reg. v. Barker*, *supra*.

The expenses appear to be recoverable by action only.

(3.) Where a highway authority receives any contribution from the county council towards the cost of any highway under section eleven, sub-section (10), of the Local Government Act, 1888, such contribution may be made, subject to any such conditions for the proper maintenance

c. 41.

Section 25. and repair of such highways, as may be agreed on between the county council and the highway authority.

The Local Government Act, 1888, s. 11, sub-section (10), *ante*, p. 495, provides that the county council may, if they think fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any public highway or public footpath in the county, though the same is not a main road. The text amends this provision by enabling the county council to impose terms and conditions upon making such contributions.

(4.) Where the council of a rural district become the highway authority for that district, any excluded part of a parish under section two hundred and sixteen of the Public Health Act, 1875, which is situate in that district, shall cease to be part of any urban district for the purpose of highways, but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.

The Public Health Act, 1875, s. 216, *ante*, p. 293, provides as follows:—"Where part of a parish is included in an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless, in the case of an urban district constituted before the passing of this Act (11th August, 1875) a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act, 1858, Amendment Act, 1861), or unless such excluded part has been included in a highway district, under the Highway Acts, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district." This provision will now cease to operate when the rural district which includes the "excluded part" becomes the highway authority by virtue of this Act.

(5.) Rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities under the Public Health Acts or any other Act, and such provisions of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct.

See the note to the next sub-section.

It is to be observed that the text enables the Local Government Board to confer on rural authorities generally powers which are otherwise exercisable only by urban authorities, and that not merely under the Public Health Acts, but under any other Act. Therefore, the Local Government Board might by general order extend to rural authorities the provisions of such Acts as the Technical Instruction Acts which at present are administered only by county councils and urban authorities.

(6.) The power to make such general orders shall be in addition to and not in substitution for the powers conferred on the Board by section two hundred and seventy-six of the Public Health Act, 1875, or by any enactment applying that section; and every order made by the Local Government Board under this section shall be forthwith laid before Parliament.

Under section 276 of the Public Health Act, 1875, *ante*, p. 378, the Local Government Board may confer upon any rural authority urban powers, that is to say, powers which the Public Health Act itself confers only upon urban authorities. This power is frequently exercised for the purpose of enabling a rural authority to make up private streets under section 150 of the Public Health Act, 1875, and to give powers with reference to scavenging and cleansing. The jurisdiction of the Local Government Board in these respects is not taken away, but that board may, in addition, by general order, that is to say, by an order applicable to all rural authorities, confer upon the rural district councils any urban powers. Hitherto, orders under section 276 of the Public Health Act, 1875, have been special, that is to say, they were addressed to a particular rural authority, having regard to the circumstances of that authority.

The provisions as to laying the orders before Parliament will only apply to the general orders made under the preceding sub-section.

Section 5 of the Public Health Acts Amendment Act, 1890, *ante*, p. 562, may be referred to as an example of an enactment applying section 276 of the Public Health Act, 1875.

**Note to
Section 25.**

(7.) The powers conferred on the Local Government Board by the said section two hundred and seventy-six, or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish.

Under section 276 of the Public Health Act, 1875, *ante*, p. 378, the application for urban powers must come from the rural authority or from persons rated to the poor rate to the extent of one-tenth of the district or of any contributory place therein for which the urban powers are applied for. Under the provision in the text the application may come from the county council or a parish council, but in either case the powers will be conferred on the rural district council alone.

26. (1.) It shall be the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district.

Duties and powers of district council as to rights of way, rights of common, and roadside wastes.

This provision is merely declaratory, for the duty mentioned in the sub-section is one which would by law devolve, and does now devolve, upon the highway authority as such. It is the duty of a highway authority to prevent the stopping up or obstruction of any public footpath, and with regard to encroachment on roadside wastes, it is to be observed that the greensward by the side of the highway and within the fences is in general part of the highway, as much as the metalled portion, and any encroachment upon it is a public nuisance, which may be prevented by indictment or injunction. See *Reg. v. U. K. Telegraph Company*, 3 F. & F. 73; 9 Cox C. C. 144, 174; 31 L. J. M. C. 166; 2 B. & S. 647; 6 L. T. (N.S.) 378; 8 Jur. (N.S.) 1153; 10 W. R. 538; *Turner v. Ringwood Highway Board*, L. R. 9 Eq. 418; *Nicol v. Beaumont*, 53 L. J. Ch. 853; 50 L. T. (N.S.) 112. See also section 11 (1) of the Local Government Act, 1888, *ante*, p. 490, and note (i), p. 491.

It should be observed that the duty of the district council extends to rights of way in an adjoining district.

Sub-section (4) of this section requires the district council to take action upon the representation of a parish council.

(2.) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council.

39 & 40 Vict.
c. 56.

The necessity for the consent of the county council should be observed.

The aid which the district council may give is not specified, but presumably it includes a grant of money in aid of legal proceedings instituted with reference to the rights in dispute. And see the next sub-section. There is much misapprehension on the subject of rights of common. These consist strictly of the rights of tenants of the manor, whether freeholders or commoners, over the waste lands of the

**Note to
Section 26.**

manor, which belong to the lord of the manor subject to such rights. They may consist of common, of pasture, of turbary, estovers, foldage, or the like.

The public, as such, have, in strictness, no rights of common, but there may be in the inhabitants of any particular village or district a right depending on ancient custom to use the wastes or part of them for purposes of recreation. See *Hall v. Nottingham*, 1 Ex. D. 1, and the cases therein cited.

Section 8 of the Commons Act, 1876, contains important provisions, which will be found in the Appendix, *post*.

(3.) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient.

This provision is to some extent explanatory of the preceding sub-section, which enables the district council to aid in maintaining rights of common. But it does not exclude other methods of aiding in the maintenance of such rights, *e.g.*, by a grant of money. It expressly enables the district council, however, to institute or defend legal proceedings, if they think fit, to prevent any illegal enclosure of or encroachment on a common, or the protection of a right of way.

(4.) Where a parish council have represented to the district council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and if that council so resolve, the powers and duties of the district council under this section shall be transferred to the county council.

When a representation is made to the district council under this sub-section, they must consider it with a view to satisfying themselves whether it is well founded or not. If they think it is well founded they must take proceedings which may be (1) summary, under the Highway Act, 1835, s. 72, or the Highway Act, 1864, s. 51; or (2) by indictment; or (3) by action for an injunction in the name of the Attorney-General for the public nuisance. If they think it is not well founded, they may refuse to take proceedings, but upon such refusal an appeal lies to the county council, who may thereupon take the like proceedings upon resolution in manner provided by section 63, *post*.

(5.) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

This means that the expenditure of a council incurred in pursuance of this section is not to be regarded as illegally incurred by reason of its being eventually found that the right of way sought to be asserted does not in fact exist.

(6.) Nothing in this section shall affect the powers of the county council in relation to roadside wastes.

The powers of the county council as to roadside wastes depend upon section 11 of the Local Government Act, 1888, *ante*, p. 490. That section imposes upon the county council the duty of maintaining main roads. Under that section the county council have the same powers as a highway board for asserting the right of the public to the use and enjoyment of the roadside wastes.

(7.) Nothing in this section shall prejudice any powers exercisable by an urban sanitary authority at the passing of this Act, and the council of every county borough shall have the additional powers conferred on a district council by this section. Section 26.

This preserves to an urban sanitary authority any special highway powers which they may possess.

27. (1.) As from the appointed day the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say— Transfer of certain powers of justices to district councils.

(a.) The licensing of gang masters ;

A gang master is defined in the Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130), to mean a person "who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation." The Act is set out *in extenso* in the Appendix, *post*.

(b.) The grant of pawnbrokers' certificates ;

These certificates have been granted by justices in petty sessions under the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), upon notice given in accordance with section 42 of that Act, and cannot be refused except on the ground that the applicant has failed to give satisfactory evidence of good character, or that his shop or any adjacent property of his is frequented by thieves or persons of bad character, or that he has failed to comply with the requirements of the Act as to notice (section 43). The provisions of the Act so far as they relate to certificates are set out in the Appendix, *post*.

(c.) The licensing of dealers in game ;

A game dealer's license has been granted by justices in special sessions under the Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 18, which is set out in the Appendix, *post*. The duty of the justices in special sessions as to the granting of these licenses is transferred by this section to the district councils.

There is no appeal against the refusal of this license.

(d.) The grant of licenses for passage brokers and emigrant runners ;

The Act relating to passage brokers and emigrant runners is the Merchant Shipping Act, 1894, the material provisions of which are set out in the Appendix, *post*.

(e.) The abolition of fairs and alteration of days for holding fairs ;

The Fairs Act, 1871 (34 Vict. c. 12), provides that upon representation duly made to him by the magistrates of any petty sessional districts within which any fair is held, or by the owner of any fair, that it would be for the convenience and advantage of the public that any such fair shall be abolished, the Home Secretary may, with the consent of the owner of the fair, order its abolition. The Fairs Act, 1873 (36 & 37 Vict. c. 37), enables the Home Secretary, upon the like representation, to order that any fair shall be held upon other days than those on which it used to be held. The representations which have hitherto been made by justices under these Acts will for the future be made by the district councils. Both these Acts are set out in the Appendix, *post*.

Under both Acts advertisements of the representation and of the order (if any) of the Home Secretary must be published.

(f.) The execution as the local authority of the Acts relating to petroleum and infant life protection ; when arising within a

Section 27.

county district, shall be transferred to the district council of the district.

The Petroleum Acts (34 & 35 Vict. c. 105 ; 42 & 43 Vict. c. 47 ; and 44 & 45 Vict. c. 67) are set out in the Appendix, *post*. In urban districts, the local authority for the execution of these Acts has hitherto been the corporation, the local board, or improvement commissioners, as the case may be, and in rural districts the justices in petty sessions.

The local authority in every district will for the future be the district council.

The Infant Life Protection Act is the 35 & 36 Vict. c. 38. It was passed for the purpose of regulating baby-farming, and it requires local authorities to keep a register of all persons authorised to receive children under the age of one year for the purpose of nursing or maintaining such children apart from their parents. The local authorities under this Act will in future be the district councils in all cases.

(2.) As from the appointed day, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district.

The term "county district" includes every urban and rural district whether a borough or not, *ante*, p. 718, section 21, sub-section (3).

The licenses above referred to are those granted under the Knackers Acts, 1786 and 1844 (26 Geo. 3, c. 71, ss. 1, 2, 13, and 7 & 8 Vict. c. 87), which are set out in the Appendix, *post*.

A license under the above Acts is quite distinct from the slaughter-house license granted by urban authorities under the Public Health Act, 1875, s. 169. In some cases both licenses have been necessary, but the necessity for this will practically disappear where both licenses have to be granted by the same body, that is, by the district council.

(3.) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

Expenses of
urban district
council.

28. The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council by this Act shall, subject to the provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875.

38 & 39 Vict.
c. 55.

Section 209 of the Public Health Act, 1875, *ante*, p. 278, provides that "in the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate, there shall be continued or established, a fund called the district fund ;" a separate account is to be kept of all moneys carried under the Act to the account of that fund, "and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon, under this Act as they may think proper." And section 210, *ante*, p. 278, provides that "for the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make, by writing under their common seal, and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called 'general district rates.'"

It should be mentioned that the expenses of an urban authority under the Public Health Act, 1875, are payable out of their general district rate, except in the cases mentioned in section 207 of the same Act, *ante*, p. 276.

Expenses of
rural district
council.

29. The expenses incurred by the council of a rural district shall, subject to the provisions of this Act, be defrayed in manner directed by the Public Health Act, 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions

of the Public Health Acts with respect to those expenses shall apply Section 29 accordingly.(a)

Provided as follows :—

(a.) Any highway expenses shall be defrayed as general expenses.(b)

(a) Provisions for the defraying of these expenses are contained in sections 229—232 of the Public Health Act, 1875, *ante*, p. 308.

(b) Hitherto in a highway parish, the highway rate has been made by the surveyor of highways upon all property rated to the relief of the poor. This rate was an equal rate, that is to say, it was levied equally upon all kinds of property. In highway districts, the expenses of highways have been, since 1878, borne by the common fund raised out of the several parishes according to the rateable value of each. 41 & 42 Vict. c. 77, s. 7. In each case the rates in each parish were equal rates. The first provision in the above section will, therefore, make no change in the incidence of rates for highway purposes. These will be borne equally by all kinds of rateable property.

(b.) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section two hundred and thirty of the Public Health Act, 1875 :

38 & 39 Vict.
c. 55.

It has been noticed that under section 229 of the Public Health Act, *ante*, p. 308, the Local Government Board may order any expenses which would otherwise be payable as general expenses, to be defrayed as special expenses chargeable upon a particular contributory place. Hitherto, when such an order has been made, the expenses have had to be defrayed out of a special rate levied in manner provided by section 230, but such rate is not equal, for the properties enumerated in section 230 are rated only at one-fourth of their rateable value. Henceforth, when an order is made relating to expenses which would, if not separately chargeable on a contributory place, be raised as general expenses, the Local Government Board may direct that the special expenses shall be raised as general expenses, that is to say, out of an equal rate to which all properties will be rateable at their full value.

(c.) A district council shall have the same power of charging highway expenses under exceptional circumstances on a contributory place as a highway board has in respect of any area under section seven of the Highways and Locomotives (Amendment) Act, 1878 :

41 & 42 Vict.
c. 77.

Section 7 of the Highways and Locomotives Amendment Act, 1878, is set out in the Appendix, *post*. After enacting that the expenses of a highway board shall be deemed to have been incurred for the common use or benefit of the several parishes within their district and shall be charged on the district fund, it contains a proviso that “if a highway board think it just by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their highways, they may, with the approval of the county authority or authorities of the county or counties within which their district or any part thereof is situate, divide their district into two or more parts and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part ; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes.”

This power of dividing their district into parts for the purpose of charging the expenses of the highways in each part upon such part separately will be exerciseable by a district council (where it has become the highway authority under section 25, *ante*), with the approval of the county council.

Section 29. (d.) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates, the district council shall make such provision as will give to that parish or area the benefit of such property or funds by way of reduction of the rates on the parish or area.

This applies where any parish has property producing an income applicable in relief of highway rates. Such a parish will still be entitled to the benefit of that property.

Guardians in London and county boroughs.

30. The provisions of this Part of this Act respecting guardians shall apply to the administrative county of London and to every county borough.

The provisions of this Part of this Act respecting guardians are contained in section 20, *ante*, p. 715.

* * * * *

Application to county boroughs of provisions as to transfer of justices' powers.

32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out of session, or of quarter sessions, which are transferred to a district council, shall apply to a county borough as if it were an urban district, and the county borough council were a district council.

The provisions of this Act here referred to are contained in section 27, *ante*, p. 727. These powers, duties, and liabilities are to be transferred to the council of a county borough, as in the case of any other urban district council, this express provision being rendered necessary by section 35, *post*.

Power to apply certain provisions of Act to urban districts and London.

33. (1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

In urban districts the overseers and assistant overseers will be appointed as formerly, unless an order is made under this sub-section. Unless an order is made overseers will continue to be appointed by justices under 43 Eliz. c. 2, s. 1, and assistant overseers by the vestry under 59 Geo. 3, c. 12, s. 7.

The powers conferred by an order under this section may be given to the urban district council or to any other representative body within the district. There is no definition of a representative body, but it may include the guardians if the union is included within the borough. See orders made under this section in 59 J. P. 745, 777, 778.

If no order is made under this section the revocation of the appointment of an assistant overseer has hitherto been in the discretion of the vestry, under 59 Geo. 3, c. 12, s. 7.

The transfer of the powers of overseers is important. These powers may include the preparation of the valuation lists, though the approval of the valuation lists will still be the duty of the union assessment committee; also the making of the poor rate, though that will have to be allowed by justices and published as heretofore.

The powers, duties, and liabilities of a parish council which may be conferred under this section are contained in the First Part of this Act.

Section 33.

(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish.

The exercise of the powers hereby conferred is left to the discretion of the Local Government Board, but that Board will probably act only upon a representation made to them by the inhabitants or representatives of the parish interested either before an order is originally made under the preceding sub-section or afterwards. And see sub-section (5), *post*.

This sub-section appears to be a modification of section 14, sub-sections (2) and (3), *ante*, p. 713, under which a parish council have power to appoint trustees of parish charities. If no order is made under the above provision these powers of the parish council may be transferred to the borough or urban council under the preceding sub-section.

It should be observed that the order can only be made when the borough or district is divided into wards.

(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

This provision requires no comment. It enables the powers conferred by the previous sub-section to be limited to particular areas within the borough or district, but it gives no indication of the cases in which such a restriction should be imposed. It is difficult to suggest such cases.

(4.) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

The provision as to the incidence of the rate seems to have been inserted *ex cauteld*, for it is not apparent how an order under this section could alter the incidence of any rate.

The provision as to officers may have reference to the protection of such officers as an assistant overseer, collector, or vestry clerk. For this purpose the order may apply some of the provisions of section 81, sub-section (7), *post*, p. 768, as to existing officers.

(5.) An order under this section may also be made on the application of any representative body within a borough or district.

The use of the word "also" refers apparently to sub-section (1), under which the order may be made on the application of the borough or district council. The expression "representative body" has been referred to in the notes to that sub-section.

An order under sub-section (2) may also be made on the application of a representative body.

* * * * *

(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity.

It will be noticed that this provision does not make the approval of the Charity Commissioners necessary to the validity of an order made by the Board with respect

**Note to
Section 33.**

to a charity ; their approval is necessary in the case of a similar order as to a charity made by a county council, under section 36, sub-section (3), *post*, p. 734.

Supplemental provisions as to control of overseers in urban districts.

32 & 33 Vict.
c. 41.

34. Where an order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers, or the powers, duties, and liabilities of overseers, that order or any subsequent order of the Board may confer on such council or body the powers of the vestry under the third and fourth sections of the Poor Rate Assessment and Collection Act, 1869.

Section 3 of the Poor Rate Assessment and Collection Act, 1869, provides that in case the rateable value of any hereditament does not exceed 20*l.* if the hereditament is situate in the metropolis, or 13*l.* if situate in any parish wholly or partly within the borough of Liverpool, or 10*l.* if situate wholly or partly within the city of Manchester or the borough of Birmingham, or 8*l.* if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow him a commission not exceeding 25 per cent. on the amount thereof.

Section 4 provides that the vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section 3 of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order ; and thereupon and as long as such order shall be in force the following enactments shall have effect :—1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of 15 per cent. from the amount of the rate. 2. If the owner of one or more of such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term, not less than one year, in respect of all such rateable hereditaments of which he is owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow him a further abatement or deduction not exceeding 15 per cent. from the amount of the rate during the time he is so rated. 3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day not being less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect : Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling house shall not be included.

The effect of the provisions in the text is that when an order has been made under section 33 giving to the council of the borough or district, or to some representative body, *either* the power of appointment of overseers and assistant overseers, *or* the powers, &c., of overseers, the powers of the vestry under the foregoing sections may be transferred to such council or representative body. Where only the power of appointing overseers and assistant overseers is conferred, the overseers will act under section 3, subject to the control of the council or body ; and the overseers must give effect to any resolution of the council under section 4. Where the powers of overseers are conferred by the order, the council, in the exercise of the powers under section 3, may be freed from the control of the vestry, and any resolution made by them under section 4 will be carried out by themselves or rescinded by them in manner provided by that section.

It should be observed that an agreement made by an owner under these sections, though purporting to be made for a term of years, is in force only so long as the hereditaments rated are under the values specified in section 3. *Norwood (Overseers of) v. Salter* [1892], 2 Q. B. 118 ; 61 L. J. M. C. 193 ; 67 L. T. (N.S.) 376 ; 8 T. L. R. 568 ; 56 J. P. 535.

It may be well to mention here that where an owner pays the rates or is rated under the above sections, the occupier is deemed to be rated and to pay the rate for the purpose of any qualification or franchise depending upon rating under sections 7 and 19 of the Act.

35. Save as specially provided by this Act, this Part of this Act shall not apply to the administrative county of London or to a county borough. **Section 35.**
Restrictions
on application
of Act to
London, &c.

The special provisions in this part of the Act applicable to the county of London and to a county borough are contained in sections 30—33 inclusive.

PART III.

AREAS AND BOUNDARIES.

36. (1.) For the purpose of carrying this Act into effect in the case of— Duties and
powers of
county council
with respect to
areas and
boundaries.

- (a.) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county ; and
- (b.) every parish which at the passing of this Act is situate partly within and partly without a sanitary district ; and
- (c.) every rural parish which has a population of less than two hundred ; and
- (d.) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district ; (a) and
- (e.) every rural parish which is co-extensive with a rural sanitary district ;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely :— 51 & 52 Vict.
c. 41.

- (i.) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county ; (b)
- (ii.) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district ; (c) and
- (iii.) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts. (d)

(a) See section 24, sub-section (5), *ante*, p. 721.

(b) It follows from this that unless an order is made to the contrary a poor law union extending into two counties will be divided into two rural districts, one in each county. See section 24, sub-section (5), *ante*, p. 721.

(c) For the definition of a county district, see section 21, sub-section (3), *ante*, p. 718.

(d) See section 24, sub-section (5), *ante*, p. 721.

(2.) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, as

Section 36. from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict.
c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

The county council may make an order uniting such a district with another district or districts, and if the district has less than five elected councillors, it will be their duty to make such an order unless for special reasons they deem it unadvisable. See section 24 (5), *ante*, p. 721. It will also be competent for the county council to direct that such a parish shall have a parish council as well as a district council, but such a direction would hardly be given except in peculiar circumstances.

There will, of course, be a parish meeting in such a parish having the powers and duties of the parish meeting of a parish which has a parish council. Where the district council and the parish council are one body, some of the powers of each must of necessity disappear, *e.g.*, the power of a parish council to complain of the default of a district council under section 16, and the consent of the two distinct bodies to the proceedings as to highways which are dealt with by section 13.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

Under section 54 of the Act of 1888, the Local Government Board may, after local inquiry, make an order for the alteration of the boundary of a county or borough and for other consequential matters. Such an order is provisional only and has no effect unless confirmed by Parliament. See the section, *ante*, p. 516.

(6.) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alteration of unions.

(7.) Where an order for the alteration of the boundary of any parish or the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be,

shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty to petition the Local Government Board against the confirmation of the order. Section 36.

(8.) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under section fifty-seven of the Local Government Act, 1888. 51 & 52 Vict.
c. 41.

See the section above referred to, *ante*, p. 516.

(9.) Where a parish is by this Act divided into two or more parishes, those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10.) Subject to the provisions of this Act, any order made by a county council in pursuance of this part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of petitioning against that order as is given by that section to any other authority.

See section 57 of the Act of 1888, *ante*, p. 516.

Sub-section (3) of that section relates to petitions against the confirmation of orders of county councils.

Guardians can hardly be affected unless the union is altered under sub-section (6). If so, it would seem that an order under that sub-section requires confirmation by the Local Government Board. See section 57, sub-section (3), of the Local Government Act, 1888, *ante*, p. 516. Section 40 of this Act expressly provides that certain orders therein named shall not require confirmation.

(11.) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect to that area; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint committee shall, if the county councils concerned fail to agree, be determined by the Local Government Board.

(12.) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration 50 & 51 Vict.
c. 61.

Section 36. before framing any order under the powers conferred on them under this Act.

These commissioners were appointed under 50 & 51 Vict. c. 61, to enquire—

- (a.) As to the best mode of so adjusting the boundaries of the county and of other areas of local government, as to arrange that no union, borough sanitary district, or parish shall be situate in more than one county ; and
- (b.) As to the best mode of dealing with parts of the county which are wholly or nearly detached from the county ; and
- (c.) As to the best mode of dealing with the cases where a borough is not an urban sanitary district, and is wholly or partly comprised in an urban sanitary district ; and
- (d.) As to any alteration of boundaries, confirmation of areas or administrative arrangements incidental to or consequential on any alteration which they may recommend in the boundaries of any county, union, borough, sanitary district, or parish.

(13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers.

It must be observed with reference to the period which is allowed by this sub-section for the making of orders by the county council that they are to be made "as soon as practicable." See sub-section (1), *ante*, and section 83, *post*, p. 771.

* * * * *

Reduction of
time for
appealing
against county
council orders.

41. The time for petitioning against an order under section 57 of the Local Government Act, 1888, shall be six weeks instead of three months after the notice referred to in sub-section three of that section.

The provisions of section 57, sub-section (3), of the Local Government Act, 1888, have been already set out, *ante*, p. 516. The provision in the text simply shortens the time within which a petition may be sent to the Local Government Board to disallow an order under that section.

Validity of
county council
orders.

42. When an order under section 57 of the Local Government Act, 1888, has been confirmed by the Local Government Board, such order shall at the expiration of six months from that confirmation be presumed to have been duly made, and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

An order under section 57 of the Act of 1888 is administrative and not judicial ; therefore, prohibition does not lie against the making of such an order. See *Reg. v. London County Council* [1893], 2 Q. B. 454 ; 63 L. J. Q. B. 4 ; 69 L. T. (N.S.) 580 ; 42 W. R. 1 ; 58 J. P. 21 ; 4 R. 529.

On the same principle, it would seem that *certiorari* would not lie, and if so, it is not clear that the validity of an order could ever have been questioned in legal proceedings. The inference to be drawn from the text appears to be that an order under section 57 may be questioned within six months from the making of the order.

PART IV.

SUPPLEMENTAL.

Parish Meetings and Elections.

43. For the purposes of this Act a woman shall not be disqualified by marriage for being on any local government register of electors, or for being an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property. **Section 43.**
Removal of
disqualifica-
tion of
married
women.

The effect of this section is that any married woman who would, if she were unmarried, be entitled to have her name inserted upon a local government register of electors will be entitled, notwithstanding her coverture, to have her name so inserted "for the purposes of this Act," viz., for the purpose of exercising the rights of a parochial elector.

As to the local government franchise, see note to section 44, sub-section (1), *post*.

Apart from this provision, while an unmarried woman was not disqualified from being enrolled as a county elector and voting at an election of county councillors (see Municipal Corporations Act, 1882, s. 63, and County Electors Act, 1888, s. 2), coverture was still a disqualification. *Reg. v. Harrold*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 163; 26 L. T. (N.S.) 616; 20 W. R. 328; 36 J. P. 438.

It must be noticed that the disability of coverture is removed by the provision in the text "for the purposes of this Act" only. It does not enable a married woman to have her name inserted upon a local government register for all purposes. She will, in fact, when her name is on the register, be entitled to vote as a parochial elector only, and for the purpose of so limiting her right to vote, a mark will be placed against her name signifying that she is entitled to vote in that capacity only. See section 44, sub-section (6), and notes.

The proviso to this section will prevent a husband and wife from being registered as joint occupiers of the same premises, or being registered one as owner and the other as occupier of the same premises.

44. (1.) The local government register of electors and the parliamentary register of electors, so far as they relate to a parish shall, together, form the register of the parochial electors of the parish; and any person whose name is not in that register shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament. Register
of parochial
electors.

This section explains in detail how the register of the parochial electors of a parish is to be formed.

It is to be made up of the parliamentary and local government registers so far as they relate to the parish.

The Acts which establish the different qualifications will be found in Mackenzie and Lushington's "Parliamentary and Local Government Registration Manual."

The Parliamentary Register consists of male persons of full age and not subject to any legal incapacity who are (a) ownership electors or (b) occupation electors. The ownership qualification only entitles its possessor to be registered in parliamentary registers for counties. Occupation electors include those registered in respect of the following qualifications:—(1.) The 50*l.* rental qualification; (2.) the 10*l.* occupation qualification; (3.) the household qualification; (4.) the lodger qualification.

The Local Government Register consists of men and women of full age, not subject to any legal incapacity, who are qualified as county electors under (a) the old burgess qualification or (b) the 10*l.* occupation burgess qualification.

The provision in the text makes the register conclusive as to the right to vote, but it should be remembered that the vote of a person disqualified or prohibited from voting would be struck off on a scrutiny held on election petition. Felons are disqualified by the Felony Act, 1870 (33 & 34 Vict. c. 23), s. 2, from voting at parlia-

**Note to
Section 44.**

mentary or municipal elections ; persons guilty of corrupt or illegal practices by the Corrupt Practices Acts, 1883 (46 & 47 Vict. c. 51), ss. 4, 6, 10, and 1884 (47 & 48 Vict. c. 70), ss. 2, 7, and 1889 (52 & 53 Vict. c. 69), s. 2 ; aliens and persons in receipt of parochial relief or other alms are disentitled to be enrolled as burgesses (see Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9, which is incorporated with the County Electors Act, 1888, s. 2). And by 39 & 40 Vict. c. 61, s. 14, a person who has been in receipt of relief by himself or his family during the year preceeding the election is prohibited from voting at any election to an office under the provisions of any statute. But this section must be read subject to the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), under which the receipt of medical relief does not disqualify under the earlier Act except for purposes of the election of guardians.

(2.) Where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register of electors for the parish within the meaning of this section.

(3.) The lists and register of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards.

This sub-section will apply where the urban district or parish is divided into wards. See *ante*, sections 20, sub-section (3) ; 23 sub-section (3), *ante*, pp. 716, 720.

(4.) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors.

(5.) Where in that portion of the parliamentary register of electors which relates to a parish a person is entered to vote in a polling district other than the district comprising the parish, such person shall be entitled to vote as a parochial elector for that parish, and in addition to an asterisk there shall be placed against his name a number consecutive with the other numbers in the list.

(6.) Where the revising barrister in any list of voters for a parish would—

51 Vict. c. 10.

(a.) In pursuance of section seven of the County Electors Act, 1888, place an asterisk or other mark against the name of any person ; or

(b.) In pursuance of section four of the Registration Act, 1885, erase the name of any person otherwise than by reason of that name appearing more than once in the lists for the same parish ; or

(c.) In pursuance of section twenty-eight of the Parliamentary and Municipal Registration Act, 1878, as amended by section five of the Registration Act, 1885, place against the name of a person a note to the effect that such person is not entitled to vote in respect of the qualification maintained in the list,

the revising barrister shall, instead of placing that mark or note, ro erasing the name, place against the name, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division three of the list, or if he is entitled to vote only as a parochial elector, a mark signifying that he is entitled to be registered as a parochial elector, and the name so marked shall not be printed in the parliamentary register of electors, but shall be printed, as the case requires, either in division three of the local government register of electors, or in a separate list of parochial electors.

41 & 42 Vict.
c. 26.
48 & 49 Vict.
c. 15.

(7.) Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish, and the revising barrister places against that name a mark or note signifying that the name should be printed in division three of the lists, an asterisk or other mark shall be there printed against the name, and such person shall not be entitled to vote as a parochial elector in respect of that entry.

(8.) Such separate list shall form part of the register of parochial electors of the parish, and shall be printed at the end of the other lists of electors for the parish, and the names shall be numbered consecutively with the other names on those lists, and the law relating to the register of electors shall, with the necessary modifications, apply accordingly, and the lists shall, for the purposes of this Act, be deemed to be part of such register.

(9.) Any person may claim for the purpose of having his name entered in the parochial electors list, and the law relating to claims to be entered in lists of voters shall apply.

(10.) The clerk of the county council or town clerk, as the case may be, shall, in printing the lists returned to him by the revising barrister, do everything that is necessary for carrying into effect the provisions of this section with respect to the persons whose names are marked by the revising barrister in pursuance of this section.

* * * * *

46. (1.) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough (a) or of a board of guardians if he—

Disqualifications for parish or district council.

(a.) Is an infant or an alien ;(b) or

(b.) Has within twelve months before his election, or since his election, received union or parochial relief ;(c) or

(c.) Has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon,(d) or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors ;(e) or

(d.) Holds any paid office under the parish council or district council or board of guardians, as the case may be ; or

(e.) Is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board.(f)

(a) It should be observed that the disqualifications here mentioned apply to members and chairmen of rural district councils, and urban district councils other than councils of boroughs. The disqualifications of borough councillors will remain as before. They are set out in the Municipal Corporations Act, 1882, ss. 12 and 39, and it is outside the scope of this Work to refer to them more fully.

Disqualifications other than those specified in this section arise under the Felony Act, 1870 (33 & 34 Vict. c. 23), s. 2 ; the Corrupt Practices Acts, 1883 (46 & 47 Vict. c. 51), ss. 4, 6, 10, and 1884 (47 & 48 Vict. c. 70), ss. 2, 3, and 1889 (52 & 53 Vict. c. 69) ; the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 32, as amended by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 9. The provisions of the last-mentioned

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sections relating to bankruptcy extend to members of sanitary authorities (district councils) and boards of guardians; but, as regards these bodies, they may be taken to be superseded by clause (c.) of the present sub-section.

(b) Aliens are persons who do not owe allegiance to the Sovereign of the United Kingdom. Persons who are aliens by birth cease to be such upon becoming naturalised British subjects. See the Naturalisation Act, 1870 (33 Vict. c. 14), and the Naturalisation Act, 1895 (58 & 59 Vict. c. 43).

(c) The words "or other alms," which occur in the similar clause relating to disqualification of burgesses (Municipal Corporations Act, 1882, s. 9), and have given rise to some difficulty, are here omitted. Relief to a man's father is not, and to his wife or children under the age of 16 is, relief to himself. *Reg. v. Ireland*, L. R. 3 Q. B. 130; 9 B. & S. 19; 37 L. J. Q. B. 73; 17 L. T. (N.S.) 466; 16 W. R. 358; 4 & 5 Will. 4, c. 76, s. 56.

A person employed by guardians in breaking stones and receiving more than the value of his work may be in receipt of relief. See *Magarrill v. Whitehaven (Overseers of)*, 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. (N.S.) 667; 49 J. P. 743.

The Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), removes the disqualifications of voters at certain elections incurred by reason of their having received medical or surgical assistance (as defined by that Act) or medicine at the expense of the poor rate, but that enactment will have no application to the disqualifications for offices imposed by the present section.

(d) It is to be noticed that a conviction does not disqualify (under this section) unless it is followed by a sentence of imprisonment with hard labour without the option of a fine or some greater punishment, such as penal servitude. An offence punishable on summary conviction is a crime within the meaning of the above clause. See *Conybeare v. London School Board* [1891], 1 Q. B. 118; 60 L. J. Q. B. 44; 63 L. T. (N.S.) 651; 39 W. R. 288; 55 J. P. 151; 9 T. L. R. 4; 17 Cox C. C. 191.

(e) As to adjudication of bankruptcy, see the Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), and 1890 (53 & 54 Vict. c. 71).

Under these Acts, a person who is adjudged bankrupt is disqualified for a period of five years for holding the offices of guardian or member of a sanitary authority; but this disqualification is to be removed and cease, if and when the adjudication in bankruptcy is annulled or the bankrupt obtains his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. A similar provision is contained in sub-section (5).

With regard to disqualification by composition or arrangement with creditors, the following cases may be referred to:—

In *Aslatt v. Southampton (Mayor, &c., of)*, 16 Ch. D. 143; 50 L. J. Ch. 31; 43 L. T. (N.S.) 464, where the words of the disqualifying Act (the Municipal Corporations Act, 1882,) related to compounding by deed, and a debtor had made a composition with his creditors but not by deed, and had executed a bill of sale to secure a sum advanced to meet the amount of the composition, JESSEL, M.R., granted an injunction to restrain the corporation from declaring void the office of alderman which he held. See also *Futcher v. Saunders*, 49 J. P. 424, decided on the similar words of the earlier Municipal Corporations Acts.

Where a returning officer ruled that a candidate who had filed a petition for liquidation, and had not obtained his certificate of discharge in respect of his partnership estate, his separate creditors never having held any meeting, was disqualified by the provisions of the Public Health Act, 1875, Schedule II., Rule 5, it was held that such ruling was correct, on the ground that the creditors of the separate estate had voted neither for the closing of the liquidation, nor for the discharge of the debtor; and per Lord COLERIDGE, C.J., on the ground that the candidate was disqualified owing to the absence of a certificate of discharge in respect of the partnership estate. *Ex parte Atherton*, 2 T. L. R. 631.

A candidate for election as a member of a local board had assigned all his property by deed to a trustee for the benefit of his creditors who should sign the deed, no sum being mentioned in it as a composition to be paid on the debts therein scheduled as due to them, and the creditors signing the deed thereby discharged him from all debts due to them by him:—Held, that he was not disqualified under the same rule, even though at the time of his election some of his creditors had signed the deed, while others did not sign it till after the election, for that the deed was not "a composition with creditors." *Reg. v. Cooban*, 18 Q. B. D. 269; 56 L. J. M. C. 33; 51 J. P. 500.

When a firm of partners make an arrangement with the creditors of the firm, every

member of the firm makes an arrangement with his creditors within the meaning of this section. *Ward v. Radford*, 11 T. L. R. 587.

The provision in the text appears to apply to adjudications and compositions before the passing of this Act, and in that respect differs from the Bankruptcy Acts, as to which see *Re Pulborough School Board Election*, *Bourke v. Nutt* [1894], 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. (N.S.) 639; 42 W. R. 388; 58 J. P. 572; 10 T. L. R. 349.

(f) The words of the clause are very similar to those in the Public Health Act, 1875, Schedule II., Rule (64), and the following cases decided with reference to that and similar provisions in other Acts may be referred to:—

A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on the road, to be used in the performance of the works, and it was held that he was liable to a penalty as being interested in a contract with the turnpike trustees under a clause similar to that in the text. *Towsey v. White*, 5 B. & C. 125; 7 D. & R. 810. The local board of Southampton, being the town council, having contracted with a person to supply iron railings, an alderman of the borough sold, in the way of his trade, to the contractor, some iron to enable him to complete his contract. It was held that the alderman was not interested in the contract. *Le Feuvre v. Lancaster*, 3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894; 2 C. L. R. 1426; 2 W. R. 307; 18 J. P. 198. With this case should be compared *Tomkins v. Jolliffe*, 51 J. P. 247. There C. had contracted with a local board to make certain alterations to gas fittings in a town hall. C. employed the defendant, who was a member of the board and a builder, to erect scaffolding for the purpose of enabling him to effect the alterations. It was held by FIELD, J., that the defendant was interested or concerned in a contract with the board. In 1846 F. was elected a town councillor, and he was re-elected in 1849. In 1843 he had undertaken to bind the books and documents of the council. No sum was fixed for his remuneration, but in 1849, while he was still engaged in his undertaking, he agreed to complete it for 150*l.*, the amount of his disbursements. There was no contract under seal. In July, 1849, he received 50*l.* on account. It was held that he was interested in a contract with the council, though he might not have been able to enforce it for want of the corporate seal. *Reg. v. Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1046; 16 J. P. 664. It was said by ALDERSON, B., that a somewhat similar clause in a local Act did not apply to a contract made before the defendant became a member, though he had not received the money. He said also that “a single bargain, as if the commissioners bought a brush in a shop, would not disqualify the seller, though the price had not been paid.” *Woolley v. Kay*, 1 H. & N. 307; 25 L. J. Ex. 351; 20 J. P. 776. In *Nicholson v. Fields*, 7 H. & N. 810; 31 L. J. Ex. 233; 10 W. R. 304, the evidence against a commissioner for being concerned in a contract with the commissioners consisted of an invoice addressed to the commissioners for several separate quantities of lime supplied at different times during four months. It was held that this was sufficient evidence. This decision was followed in *Lewis v. Carr*, 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. (N.S.) 44; 24 W. R. 940. In that case, BRAMWELL, B., referring to the corresponding clause in the Municipal Corporations Act, said: “I think if a shilling’s worth of stationery were bought of an alderman, there would be a contract between the corporation and that alderman.” But, in another place, he added: “I doubt very much whether the Legislature intended these words to comprehend the case when there was a trifling dealing over the counter, and when the price of the articles was well known.” When a member of a local board received payment of 19*l.* 19*s.* 9*d.* from the board, to reimburse him for work done for the surveyor of the board, the work consisting of the use of men and horses at intervals during two years, it was held that he was disqualified. *Fletcher v. Hudson*, 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. (N.S.) 125; 30 W. R. 349; 46 J. P. 372. The brother of the defendant entered into a contract with a vestry constituted under the Metropolis Management Act, 1855, and in order to enable him to carry it out, borrowed money from the defendant, who by way of security took an assignment of the contract. Afterwards, the defendant was elected a member of the vestry. It was held that the defendant was interested in a contract with the vestry. *Hunnings v. Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. (N.S.) 361; 32 W. R. 267; 48 J. P. 132. Where an officer of a local board was appointed to superintend drainage works as their engineer, receiving by way of remuneration a percentage on the outlay, it was held that he had an interest in the contract between the board and their contractor. *Whiteley v. Barley*, 21 Q. B. D. 154; 54 L. J. Q. B. 643; 36 W. R. 823; 52 J. P. 595. The defendant, a member of a local board, was employed by persons with whom the board had contracted for the performance of certain works on the premises, the board to do portions of

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the works so contracted for. It was held that the defendant had been concerned in contracts entered into by the board within the meaning of the above rule. *LOPES, L.J.*, said: "I express no opinion with regard to such very trifling matters as were suggested in the argument, *e.g.*, the purchase of a paint-brush, or a few nails from a member of the board. It may be that the maxim *de minimis non curat lex* would be applicable in such cases." *Nutton v. Wilson*, 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522; 53 J. P. 644; 5 T. L. R. 439. A. and his partner, S., were under contract and bound to repair roads and do other works for a borough council. In October, A. dissolved the partnership and made over the contracts to S. In November, A. was elected councillor on a special case. It was held that A. was disqualified on the ground that he remained liable under his contracts. The petitioner had published a notice before the election to the effect that A. was disqualified by reason of the contracts with the council, and the question was publicly discussed in the ward:—Held, that votes given for A., whose disqualification was notorious, were thrown away, and that the petitioner who had the next highest number of votes must be declared elected. *Cox v. Ambrose*, 55 J. P. 23; 60 L. J. Q. B. 114; 7 T. L. R. 59.

The interest in the contract continues so long as the contract itself exists. This may be important in considering whether an action for penalties has been brought in time. See *Todd v. Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278. As to the liability of a member for contracts entered into without his knowledge or against his orders, see *Miles v. McIlwraith*, 8 App. Cas. 120; 31 W. R. 591; 48 L. T. (N.S.) 689; 52 L. J. M. C. 17.

It appears from the decision in *Mellis v. Shirley Local Board*, 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. (N.S.) 810; 34 W. R. 187; 50 J. P. 214, that a contract between a local board and a member is altogether void and cannot be enforced. But the case does not decide whether the contract would be void if the member became interested in it after it had been made. *COTTON, L.J.*, seemed to be of opinion that it would not, though the member would be prohibited from taking any benefit under it.

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

- (a.) In the sale or lease of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or
- (b.) In any newspaper in which any advertisement relating to the affairs of the council or board is inserted; or
- (c.) In any contract with the council or board as a shareholder in any joint stock company; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

The exceptions as to sales or leases of lands and loans of money are similar to those contained in the Public Health Act, 1875, Schedule II., Rule 64, repealed by this Act. Reference may be made to *Reg. v. Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. (N.S.) 688; 28 W. R. 596; 44 J. P. 507, where it was held that a member of a sanitary authority was not disqualified by reason of a lease to him by the board of a sewage farm containing covenants on the part of the board to supply, and on his part to use on the demised premises the sewage of the district. *LUSH, J.*, said that the words were intended to cover a lease of a farm for agricultural and sewage purposes, whether made by or to the sanitary authority. It has also been held that the letting of a building for the purposes of a polling station at an election is within this exception. *Nell v. Longbottom* [1894], 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. (N.S.) 499.

The remainder of clause (a.) is new. It enables the owner or occupier of a quarry or gravel pit who is a member of the council to sell stone or gravel, and the owner or occupier of any land to sell other materials from his land for the making or repair of highways or bridges. (Compare 54 & 55 Vict. c. 63, s. 5.) It further enables a member to contract with his council for the transport of materials for such repairs, with this limitation, that the highways or bridges must be in his own immediate neighbourhood. Hitherto, a waywarden who desired to contract for the supply or cartage of materials for his parish must have had a justices' license under 27 & 28 Vict. c. 101, s. 20.

Clauses (b.) and (c.) resemble the similar provisions contained in the Public Health Act, 1875, Schedule II., Rule 64 (now repealed), except that the prohibition, which may be dispensed with under clause (c.) may be dispensed with by the county council instead of the Local Government Board. A further power of dispensation by the county council is contained in the next sub-section.

(3.) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

This provision applies only to parish councillors, not to district councillors. And it extends only to disqualifications arising out of interests in contracts under sub-section (1), (e.).

The removal of the disqualification will probably be made in most cases on the application of the councillor or candidate.

(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

This provision as to bankruptcy is the same as that contained in the Bankruptcy Act, 1883, s. 32, already noticed.

In the case of composition or arrangement the disqualification will continue during the full period of five years unless in the meantime the debts are paid in full.

(5.) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

This provision is necessary as there are some disqualifications attending to the office of guardian which do not attach to the office of district councillor under this Act. For an illustration see the provisions of 5 & 6 Vict. c. 57, s. 14.

(6.) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant.

A similar provision relating to councillors of a borough is contained in the Municipal Corporations Act, 1882, s. 39.

It seems to be necessary that the seat should be declared vacant under the next sub-section before a vacancy actually takes place.

(7.) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk

Section 46. of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant.

There will not, as it seems, be any actual vacancy until a declaration is made under this sub-section. See the similar provision in the Municipal Corporations Act, 1882, s. 39, and the cases decided with reference to it. *Reg. v. Leeds (Mayor, &c., of)*, 7 A. & E. 963; *Hardwick v. Brown*, L. R. 8 C. P. 406; 28 L. T. (N.S.) 502; 21 W. R. 639; 37 J. P. 407; *Reg. v. Welshpool (Mayor, &c., of)*, 35 L. T. (N.S.) 598.

It has been held in a recent case arising under a similar provision in the Education Act, 1870, disqualifying a member by absence, that a school board are not entitled to proceed to the election of a new member without first giving the defaulting member an opportunity of explaining or excusing his absence. *Richardson v. Methley School Board* [1893], 3 Ch. 510; 62 L. J. Ch. 943; 69 L. T. (N.S.) 308; 42 W. R. 27; 9 T. L. R. 603.

(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

This fine will be recoverable before justices in manner provided by the Summary Jurisdiction Acts. See 42 & 43 Vict. c. 49, s. 51. The amount of the fine to be imposed in any given case will be in the discretion of the justices. There is no appeal to quarter sessions against the conviction, but a special case may be stated upon any point of law under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, s. 33.

(9.) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council.

This section will, therefore, apply to members of London vestries, to London auditors, and to members of the Woolwich district council.

* * * * *

Supplemental provisions as to elections, polls, and tenure of office.

48. (1.)

(2.) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, (a) and shall provide, amongst other things,—

- (i.) For every candidate being nominated in writing by two parochial electors as proposer and seconder, and no more; (b)
- (ii.) For preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district; (c)
- (iii.) For preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward; (d)
- (iv.) For fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening; (e)
- (v.) For the polls at elections held at the same date and in the same area being taken together, except where this is impracticable; (f)
- (vi.) For the appointment of returning officers for the elections.

(a) The rules in force at the date of publication of this edition are set out in the Appendix, *post*.

(b) The rules prescribe the form of the nomination paper and the mode in which it is to be signed.

(c) A voter at an election of guardians or district councillors may nominate or vote only once, though he may be qualified to nominate or vote in more than one parish or area. The elector will have the right in such a case to elect in which parish or area in the same union or district he proposes to nominate or vote.

(d) Where a parish is divided into wards, no elector is to nominate or vote in more than one ward.

(e) The poll must always be kept open from 6 P.M. to 8 P.M., but subject to this, the hours are to be fixed by the county council.

(f) The intention appears to be that in rural districts the elections of parish and rural district councillors shall be conducted at the same time, and in urban districts the elections of guardians and urban district councillors. Reference should be made to the rules to determine in what cases the polls at elections of parish and rural district councillors and of guardians and urban district councillors shall be taken together. In boroughs in ordinary years the guardians will come into office on the 15th April (section 20, sub-section (6), *ante*, p. 717), while the borough councillors are elected on November 1st, so that these elections cannot be held together.

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(3.) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts), shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

35 & 36 Vict.
c. 33.
47 & 48 Vict.
c. 70.
45 & 46 Vict.
c. 50.

(a.) Section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

(b.) Section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

Subject to the alterations and modifications made by the rules, the elections under this Act will be conducted in the same manner as municipal elections. See the Municipal Corporations Act, 1882, s. 58, and Schedule III., Part 3. Section 74 of that Act deals with certain offences in relation to nomination papers. It provides that if any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or knowingly delivers any forged nomination paper, he shall be guilty of a misdemeanor and liable to imprisonment, with or without hard labour, for a term not exceeding six months. An attempt to commit any of these offences is punishable in the same way. Section 75 relates to offences by overseers and returning officers. The rules contain adaptations of both these sections.

Part IV. relates to corrupt practices and election petitions, and as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, is already applied to elections of borough councillors, local boards, improvement commissioners, and guardians. The provisions of both these Acts are set out in the Appendix, *post*, and they are applied to elections under this Act with slight modifications by the rules.

Section 6 of the Ballot Act, 1872, enables the returning officer to use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is defrayed out of a local rate, but he must make good any damage done to the room and defray any expense consequent on its being used for the poll. The text enables the room to be used for hearing objections to nomination papers and for counting votes.

Section 37 of the Act of 1884 exempts certain elections from the provisions contained in the Act as to maximum expenses. Such exemption will extend to elections under this Act.

Section 48. (4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections^(a) of councillors of a borough, and to the acceptance of office,^(b) resignation,^(c) re-eligibility of holders of office,^(d) and the filling of casual vacancies,^(e) and section fifty-six of that Act^(f) shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, and of members of the local board of Woolwich, and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided that—

- (a.) The provisions as to resignation shall not apply to guardians, and district councillors of a rural district shall be in the same position with respect to resignation as members of a board of guardians;^(g) and
- (b.) Nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election;^(h) and
- (c.) The rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.

(a) In municipal elections the expenses are payable out of the borough fund (Municipal Corporations Act, 1882, s. 140, Schedule III., Part 3, Rule (5), and Schedule V., Part 2, Rule (1)). The rules for the first elections (which will probably be followed in rules for subsequent elections) provided in the case of elections of rural district councillors that the expenses of taking a poll in the parish should be defrayed by the rural district council, and charged to the parish as general expenses; other expenses of the election to be defrayed by the rural district council as general expenses. In the case of guardians, the expenses of a poll were to be defrayed by the board, and charged to the parish; other expenses were to be charged to the common fund. In urban districts other than boroughs all the expenses were to be defrayed out of the fund applicable to the expenses of executing the Public Health Act, 1875. When polls for the election of parish and rural district councillors or of guardians and urban district councillors were taken together, the expenses of the poll were to be borne in equal shares by the two authorities concerned.

(b) In a borough every qualified person elected to a corporate office must accept the office or pay to the council a fine (in the case of a councillor) of such amount not exceeding 50*l.*, as may be fixed by a bye-law of the council, or if there is no bye-law, 25*l.* (Municipal Corporations Act, 1882, s. 34). The rules for the first election altered the latter penalty to 20*l.*

(c) In a borough a councillor may resign at any time by writing, signed by him and delivered to the town clerk, on payment of the fine provided for non-acceptance of office (Municipal Corporations Act, 1882, s. 36). These provisions are only to apply to urban district councillors. See sub-section (a.), *supra*. The rules for the first elections adapted this provision in the case of urban district councils other than those of boroughs by substituting the clerk of the urban district council for the town clerk.

(d) In a borough a person ceasing to hold a corporate office, unless disqualified to hold the office, is re-eligible (Municipal Corporations Act, 1882, s. 37).

(e) The Municipal Corporations Act, 1882, s. 40, provides that, on a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office. In case of more than one casual vacancy being filled at the same election, the councillor elected by the smallest number of votes is to be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number

of votes is to be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or any doubt arises, the order of rotation is to be determined by the council. Non-acceptance of office creates a casual vacancy. This general provision is subject to proviso (b.), *supra*.

(f) Section 56 of the Municipal Corporations Act, 1882, provides as follows:—

(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination the retiring councillors shall be deemed to be re-elected.

(g) The resignation of guardians is regulated by 5 & 6 Vict. c. 57, s. 11, which enables the Local Government Board to accept the resignation of any guardian for any cause they may deem reasonable.

(h) This proviso is similar to that applicable to elections of county councillors in 54 & 55 Vict. c. 68, s. 1, sub-sect. (4).

(5.) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such local board or vestry as aforesaid, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

The text does not in any way indicate the kind of difficulties for which it provides, and the language is so wide and vague that it might apply to any objection which could be raised to the validity of an election. It will not, however, supersede the ordinary modes of trying a question of validity of an election, viz., by election petition or *quo warranto*. The section has been made use of in cases where, by reason of equality of votes, there have been double returns.

(6.) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge, or, except in the prescribed cases, for such reasonable charge as may be prescribed.

The conditions and rates of charge will be prescribed by the Local Government Board. See section 75, sub-section (2), *post*, p. 766.

(7.) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.

The expenses here referred to are those of the returning officer. The county council are to fix this scale. If the county council have not fixed a scale a month before the first election, the Local Government Board were to do so for purposes of the first election.

Section 50.
Supplemental
provisions as
to overseers.

50. If, in the case of a rural parish or of any urban parish in respect to which the power of appointing overseers has been transferred under this Act, notice in the prescribed form of the appointment of overseers is not received by the guardians of the poor law union comprising the parish within three weeks after the fifteenth day of April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians shall make the appointment or fill the vacancy, and any overseer appointed by the guardians shall supersede any overseer previously appointed whose appointment has not been notified. Any such notice shall be admissible as evidence that the appointment has been duly made.

The power of appointing overseers in an urban parish may be transferred to the urban authority or any representative body within the district, by order of the Local Government Board under section 33, *ante*, p. 730. When the power is transferred to an urban authority they must give notice to the guardians under this section.

Under the present section such notice is to be admissible as evidence that the appointment was duly made.

The section prescribes a time within which the notice is to be given, viz., within three weeks after the 15th April (the day on which a new parish council comes into office in each year) or after the occurrence of a vacancy in the office of overseer. If the notice is not received by the guardians within that period, they are required by this section to make the appointment themselves, and the overseer appointed by them is to supersede any previously appointed overseer whose appointment has not been notified. This supersession will, it is submitted, only take place as from the date of the appointment of the overseer by the board of guardians, and acts done before that date by any overseer whose appointment fails for want of notification will be valid.

Parish and District Councils.

* * * *

Supplemental
provisions as
to transfer of
powers.

52.

(3.) The consent of justices shall not be required for the sale of land belonging to a parish which has been used for materials for the repair of highways or for the purchase of land with the proceeds of any such sale.

Section 48 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), provides that where land has been allotted to parishes under the Inclosure Acts (see the Inclosure Act, 1845 (8 & 9 Vict. c. 118, s. 72)), for the purpose of obtaining materials for the repair of the highways in such parish, and the materials have been exhausted: "It shall and may be lawful for the surveyor of such parish for the time being by or with the consent of the vestry, and he is hereby authorised and required with the consent in writing of the justices of the peace at a special sessions for the highways, to sell and convey to some person whose lands adjoin thereto, or if he refuse to purchase to any other person, the said parcels of land from which the said materials have been so exhausted as aforesaid, at and for such price as the said justices may deem fair and reasonable, and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof."

The 8 & 9 Vict. c. 71, extends these provisions to all lands belonging to parishes, or to the surveyor of highways for the purpose of the repair of highways, the materials in which have been exhausted.

Under the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 11, where a highway board is constituted, the property, powers, duties, &c., of the surveyor of a parish pass to the board who thus become the authority to exercise the powers of the surveyor under section 48 of the Act of 1835.

Where under section 25 of this Act a rural district council has become the highway authority for the district, these powers of the surveyor are transferred to that council.

In an urban district the powers of the surveyor, and also those given to the vestry by the Act of 1835, are exercisable by the urban authority (Public Health Act, 1875, s. 144).

The consent of justices required by section 48 of the Act of 1835 is no longer to be

necessary, and that of the vestry will in future be given by the parish council or meeting, as the case may be.

Where the lands have been acquired by a parish, not only for the purpose of the supply of material for the repair of the roads, but for other purposes also, section 48 of the Act of 1835 does not apply, and in order to sell the land, when the materials are exhausted or are not suitable, and the land is not available for the other purposes, recourse must be had to the Exhausted Parish Lands Act, 1876 (39 & 40 Vict. c. 62). Under this Act the land is to be dealt with as parish property under the 5 & 6 Will. 4, c. 69, and the 5 & 6 Vict. c. 18, and no consent of justices to the sale is required.

Note to
Section 52.

* * * * *

53. (1.) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

Supplemental
provisions as
to adoptive
Acts.

The adoptive Acts are enumerated in section 7 of this Act. They are the Lighting and Watching Act, 1833 ; the Baths and Washhouses Acts, 1846 to 1882 ; the Burial Acts, 1852 to 1885 ; the Public Improvement Act, 1860 ; and the Public Libraries Act, 1892.

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

The difference in the language of this and the preceding sub-section is noticeable. Under sub-section (1) the executive authority or parish meeting "*may* transfer the powers, duties, and liabilities of the authority : " under this sub-section "the powers and duties of the authority *shall* be transferred." The transfer under the present enactment is compulsory, not permissive. See sub-section (3), *infra*, and section 67, *post*, as to the effect of this transfer.

This sub-section has an extensive application. In many instances before the passing of this Act a parish was partly in an urban district. That part is now, speaking generally, a separate parish with a parish council in the rural portion. In such cases the provisions of this sub-section apply, and the powers and duties of the commissioners or other authority under the adoptive Act pass upon the appointed day to the governing bodies of the areas which are wholly or partly comprised in the area under the adoptive Act. These governing bodies are, in the case of a rural parish wholly or partly comprised in the area under the adoptive Act, the parish council, where it exists, and where it does not exist, the parish meeting ; in the case of an urban district comprising part of the area under the adoptive Act, the urban district council.

The bodies to whom these powers and duties are jointly transferred are required to appoint a joint committee to act in the exercise and performance of them. It seems that the provision of section 57, *post*, as to the powers which may be exercised by joint committees, will not apply to a joint committee appointed to exercise the definite powers which are entrusted to them by this sub-section ; such a committee will have all the powers of the authority under the adoptive Act.

The present provision is not intended to be permanent ; it is to hold good "until other provision is made in pursuance of this Act." The reference seems to be to the

Note to Section 53. power given by sub-section (4), *post*, to a county council to alter the boundaries of an area under the adoptive Act; but where on the appointed day such an area extends into several rural parishes or urban districts, it will probably be found a matter of great difficulty to bring it within the area of one governing body, and the execution of adoptive Acts by means of a joint committee will probably prove a more permanent arrangement than seems to have been contemplated by the framers of the Act.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

This obscurely-worded clause must be interpreted in the light of section 67, *post*, p. 759. The meaning seems to be that when a parish council (under sub-section (1)) or the governing bodies mentioned in sub-section (2) become invested with the powers and duties of a previously existing authority under an adoptive Act, the benefit and the burden of the property, debts, and liabilities of the superseded authority are to remain the benefit and burden of the area of that authority. Where that area is a part of a rural parish and a transfer has been made under sub-section (1), the parish council will be the authority for the execution of the Act, but the expenses of the execution will be paid out of the rate levied under the adoptive Act upon the part of the parish which has adopted it, and not out of a rate levied upon the whole parish. On the other hand, the income (if any) arising out of the execution of the adoptive Act will go in reduction of the rate under the adoptive Act, and not in augmentation of the general revenues of the parish. Where the area under the adoptive Act is made up of parts of different parishes (whether rural or not), the executive authority will be the bodies mentioned in sub-section (2), acting by their joint committee. The rate will be levied as before the transfer upon the area which has adopted the Act, each part of a parish contributing its apportioned part and having credited to it its apportioned share of the revenue arising under the Act. No provision is made by this Act as to how the apportionment is to be made in these cases, but it may be presumed that it may be made by the authority for the execution of the adoptive Act upon the basis of rateable value.

It may be mentioned here that by the Local Government Act, 1888, s. 100 (which is incorporated with this Act, by section 75, *post*), the expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for that Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose.

Agreements may be made under section 68, *post*, p. 760, as to the adjustment of property and liabilities between the authorities interested, and questions as to the transfer of powers, duties, and liabilities may be determined summarily by the High Court under section 70, *post*, p. 762.

(4.) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

It is to be noticed that the powers of a county council under this sub-section can only be exercised upon the application of a parish council. No power to apply is given to a district council unless an order is first made under section 33, *ante*, p. 730, giving it the power of a parish council under this sub-section.

- 54.** (1.) Where a new borough is created, or any other new urban district is constituted, or the area of an urban district is extended, then—
- Section 54.**
Effect on parish council of constitution of urban district.
- (a.) As respects any rural parish or part of a rural parish which will be comprised in the borough or urban district, provision shall be made, either by the constitution of a new parish, or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and
- (b.) As respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and
- (c.) Provision shall also where necessary be made for the adjustment of any property, debts, and liabilities affected by the said creation, constitution, or extension.

A new borough is created by charter of the Queen in Council under Part XI. of the Municipal Corporations Act, 1882. A new urban district other than a borough is created by order of the county council confirmed by the Local Government Board under section 57 of the Local Government Act, 1888. Under the same section and in the same manner the area of an urban district other than a borough may be extended. The boundaries of a borough may be extended under section 54 of the same Act by provisional order of the Local Government Board confirmed by Act of Parliament.

The necessary consequence of creating or extending an urban district (unless the newly-included part is already part of an urban district) is to take in all, or part of one or more rural parishes. Such parts are by the order to be made separate parishes, or are to be annexed to parishes already within the borough or district, and provision is to be made for the appointment of overseers as stated in the text. Similar provision is to be made for the remainder of a rural parish, of which part has been taken into the borough or district. And where necessary there is to be an adjustment of property, debts, and liabilities.

(2.) The provision aforesaid shall be made—

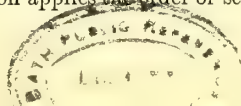
- (a.) Where a new borough is created, by a scheme under section two hundred and thirteen of the Municipal Corporations Act, 1882; (a) 45 & 46 Vict. c. 50.
- (b.) Where any other new urban district is constituted by an order of the county council under section fifty-seven of the Local Government Act, 1888; 51 & 52 Vict. c. 41.
- (c.) Where the area of an urban district is extended, by an order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888. (b)

(a) Under section 213 of the Municipal Corporations Act, 1882, the committee of council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority. The scheme so made is to provide for the matters mentioned in the preceding sub-section.

(b) See the sections referred to, *ante*, p. 516.

(3.) Where the area of an urban district is diminished this section shall apply with the necessary modifications.

This will generally happen when a borough is extended so as to include part of another urban district. It is unlikely that any part of an urban district will be made rural. When the sub-section applies the order or scheme must make a provision



**Note to
Section 54.**

corresponding to those contained in sub-section (1), with such modifications as are necessary to make that sub-section applicable to an urban parish.

Power to
change name
of district or
parish.

55.

(3.) Any district council may, with the sanction of the county council, change their name and the name of their district.

In the case of a district council, that council itself is the body to decide whether the name shall be changed or not; but the consent of the county council is necessary to give effect to the wishes of the inferior authority. Formerly a local board might, with the sanction of the Local Government Board, change its name under section 311 of the Public Health Act, 1875, *ante*, p. 409.

(4.) Every change of name made in pursuance of this section shall be published in such manner as the authority authorising the change may direct, and shall be notified to the Local Government Board.

The authorising authority will, it seems, be in all cases the county council.

(5.) Any such change of name shall not affect any rights or obligations of any parish, district council, authority, or person, or render defective any legal proceedings, and any legal proceedings may be continued or commenced as if there were no change of name.

As to the transfer of stock standing in the name of a district council upon a change of name under this Act, see 58 & 59 Vict. c. 32, *post*.

Committees of
parish or dis-
trict councils.

56. (1.) A parish or district council may appoint committees consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval.

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highways Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

This provision applies to all parish councils and to rural district councils, and to the councils of urban districts other than boroughs (sub-section (4)). So far as it relates to district councils, it is in substitution for sections 200 and 201 (*ante*, pp. 272, 273) of the Public Health Act, 1875, which are repealed by this Act (see Schedule II.); the latter section entirely, the former except so far as it applies to boroughs.

Under the new provision the constitution of these committees of district councils is altered; they need no longer consist exclusively of members of the council, and, of course, there is no reference to *ex officio* guardians, who will no longer exist after the appointed day (section 20, sub-section (1), *ante*).

The effect of the proviso upon the earlier part of the clause is not quite clear, but it appears that the district council may delegate to the committee any of their powers, and any delegated power may be exercised by the committee as if they were the district council, as the case may be, but the acts of the committee will always require the approval of the council which appointed it, and will not be valid until that approval has been obtained. An exception to this rule is made by the proviso in cases where a district council appoints a committee for purposes of the Public Health or Highway Acts; in such cases the district council may authorise the committee to institute certain proceedings or to do certain acts, and in respect of such proceedings or acts no subsequent confirmation by the district council will be required. But no such authorisation is to be given with respect to raising loans or making rates or contracts. All committees will retire at the next annual meeting after their appointment. The annual meeting of a district council is to be held as soon as may be after the 15th April (section 59, sub-section (1), *post*, p. 755, and Public Health Act, 1875, s. 199, and First Schedule, Part (1), Rule (11), *ante*, p. 428).

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(3.) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect. Section 56.

Part 4 of the First Schedule deals with the proceedings of committees of parish or district councils, but merely empowers the appointing council to frame regulations as to the quorum, proceedings, place of meeting, and area of authority of a committee, and subject to such regulations enables a committee to regulate its own quorum, proceedings, and place of meeting, and gives a second or casting vote to the chairman of the committee. See Schedule I., Part 4, *post*, p. 774.

The rules applicable to committees of local authorities contained in Schedule I. of the Public Health Act, 1875, are repealed by this Act. See Schedule II., *post*, p. 775.

(4.) This section shall not apply to the council of a borough.

Section 200 of the Public Health Act, 1875 (*ante*, p. 272), still applies to the appointment of committees by councils of boroughs.

57. (1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district. Joint committees.

Under this sub-section joint committees may be appointed by two or more district councils, by two or more parish councils, and by any number of parish and district councils for any purpose in which the appointing councils are jointly interested. Such purposes are numerous, and amongst many others which might be mentioned are the inter-communication of the sewers of adjoining districts which may be the subject of agreement between district councils (Public Health Act, 1875, s. 28, *ante*, p. 60); the supply of water by one district council to the council of an adjoining district (*ib.*, section 61, *ante*, p. 87); and the protection of rights of way (*ante*, p. 725, section 26); the exercise by the council of a parish of any power which is exercisable outside that parish, such as the acquisition of a right of way (section 8, sub-section (1), (*g*), *ante*, p. 703); the doing or contributing to the expense of doing any of the matters specified in section 8 (see section 8, sub-section (1), (*k*)); the adoption or rejection of plans for the sewerage or water supply of a parish which are under the consideration of a district council (see section 16, sub-section (3), and note, *ante*, p. 714).

It will be noticed that very large powers may be conferred upon a joint committee by the appointing councils under the present clause.

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

It will be observed that the power to make contracts is not reserved, as it is in the case of a committee authorised by a district council to exercise their powers under the Public Health or Highway Acts (section 56, sub-section (1)).

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the county councils who appointed it.

As to the annual meetings of district councils, see note to section 56, sub-section (1), *ante*.

The period of fourteen days mentioned in the text is, it is presumed, considered sufficient to provide against a joint committee holding office after the annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

Section 57.

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

The reference is to section 56, sub-section (2), *ante*.

Where a parish council is about to join in appointing a joint committee with power to perform duties in relation to a part of the parish having a defined boundary and separate interests, the council will be bound, upon the request of a parish meeting held for the part, to appoint a representative or representatives of that part to sit upon the joint committee.

Audit of
accounts of
district and
parish
councils and
inspection.

58. (1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

The accounts in a borough are audited half-yearly under the Municipal Corporations Act, 1882, s. 26, and this applies to the accounts of the corporation as urban sanitary authority. See the Public Health Act, 1875, s. 246, *ante*, p. 325.

The accounts of an urban authority other than the council of a borough are yearly audited under the Public Health Act, 1875, s. 246, *ante*, p. 325.

The accounts of a board of guardians are audited half-yearly (General Order for Accounts, 14th January, 1867), and this is applied to the guardians in their capacity as rural sanitary authority (Public Health Act, 1875, s. 248, *ante*, p. 331). No alteration is made by this Act in this respect. See the next sub-section.

(2.) The said accounts shall, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.

The principal enactments here incorporated are those contained in the Public Health Act, 1875, s. 247, *ante*, p. 326, and s. 250, *ante*, p. 332, as amended by the District Auditors Act, 1879, *post*, section 5 of which provides that the Local Government Board may make the necessary regulations as to the audit of accounts.

The Acts relating to district auditors are 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—9; 12 & 13 Vict. c. 103, ss. 9, 11; 29 & 30 Vict. c. 113, ss. 5—7; 42 Vict. c. 6. These Acts are set out in full in the Appendix, *post*.

The joint committees referred to in the text are those which may be appointed under sections 53 and 57, *ante*. The accounts of such a joint committee will be audited by the district auditors, even when one of the councils is that of a borough.

(3.) The Local Government Board may, with respect to any audit to which this section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor.

This provision will enable the Local Government Board to modify the enactments contained in the Public Health Act, 1875, s. 247, sub-sections (3), (4), and (10). See the text of these sub-sections, *ante*, p. 326.

* * * * *

(5.) Every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district. Section 58.

This sub-section applies to the books, &c., under the control of the rural district council. It will be observed that no penalty is imposed for refusal to permit or hindering inspection.

59. (1.) Section one hundred and ninety-nine and Schedule I. of the Public Health Act, 1875, so far as that schedule is unrepealed (which relate to the meetings of urban authorities, and to the meetings and proceedings of local boards), shall apply in the case of every urban district council other than a borough council and of every rural district council and board of guardians, as if such district council or board were a local board, except that the chairman of the council or board may be elected from outside the councillors or guardians. Supplemental provisions as to district councils. 38 & 39 Vict. c. 55.

See section 199 of the Public Health Act, 1875, *ante*, p. 271, and Part (1) of the First Schedule to that Act, *ante*, p. 426.

The provision in the text applies those rules and also the enactment contained in section 199 as to the meetings of urban authorities to all district councils, urban and rural (except the council of a borough).

A variation is made to Rule 3 of Part (1) of the First Schedule above mentioned; under that rule a local board is to appoint at their annual meeting one of their number to be chairman for one year at all meetings at which he is present. The chairman of a district council or board of guardians may be elected from outside the councillors or guardians. This has already been enacted as regards boards of guardians and rural district councils (*ante*, pp. 717, 721, section 20, sub-section (7), section 24, sub-section (4)); but the provision in the text extends to the chairmen of urban district councils (other than councils of boroughs).

(2.) Any urban district council other than a borough council, and any rural district council and board of guardians may, if they think fit, appoint a vice-chairman to hold office during the term of office of the chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

Under section 20, sub-section (7), power has already been given to a board of guardians to elect a vice-chairman from outside their own body. It is not clear that this power has been extended to rural district councils by section 24, sub-section (4), and no similar provision is made by section 23, which deals with the constitution of urban district councils. Under the present clause, however, it is clearly competent for any of these bodies to appoint a vice-chairman, but whether (except in the case of guardians) he may be appointed from outside is doubtful. A vice-chairman so appointed will retire at the expiration of the chairman's year of office.

(3.) Any rural district council shall be entitled to use for the purpose of their meetings and proceedings the board room and offices of any board of guardians for the union comprising their district at all reasonable hours, and if any question arises as to what hours are reasonable, it may be determined by the Local Government Board.

The object of this provision is to enable the rural district council to meet at the board room of the guardians in the same manner as the rural sanitary authority of the union have hitherto done.

* * * * *

(5.) If any district council, other than a borough council, become unable to act, whether from failure to elect or otherwise, the county council of the county in which the district is situate may order elections

Section 59. to be held and may appoint persons to form the district council until the newly elected members come into office.

It does not appear that the power of the county council under this clause can be exercised by a joint committee of county councils where the district is situate in more than one county, as may in exceptional circumstances be the case (section 36, sub-section (1), *ante*, p. 733).

(6.) Nothing in this Act shall affect any powers of the Secretary of State under the Public Health Supplemental Act for Aldershot, 1857, or the position of persons nominated under those powers.

20 & 21 Vict.
c. 22.

Under the Public Health Supplemental Act for Aldershot, 1857, the Secretary of State for War has power to nominate from time to time three members of the local board of health in addition to the elected members of that body. This power is retained.

Miscellaneous.

Supplemental
provisions as
to guardians.

60. (1.) The council of each county may, from time to time, by order, fix or alter the number of guardians or rural district councillors to be elected for each parish within their county, and for those purposes may exercise powers of adding parishes to each other and dividing parishes into wards, similar to those which by the Acts relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Local Government Board.

The power to fix and alter the number of guardians has hitherto exclusively belonged to the Local Government Board under 4 & 5 Will. 4, c. 76, s. 38, and 7 & 8 Vict. c. 101, s. 18. The same body derived their power of adding parishes to each other from 31 & 32 Vict. c. 122, s. 6. That section provides that the Local Government Board may by order add any parish in a union, the population of which, according to the last census, does not exceed 300, and the annual rateable value of which does not exceed the average rateable value of the parishes in the same union, according to the valuation lists in force for the time being, to some adjoining parish in the same union for the purpose of the election of guardians. By 39 & 40 Vict. c. 61, s. 12, the Local Government Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward is, for the purposes of such election, to be deemed a separate parish except so far as the Board may otherwise order.

These powers are by the text conferred on the county council or on the joint committee in the cases mentioned in sub-section (3).

(2.) The council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, and in order that as nearly as may be one third of the persons elected as guardians for the union, and one third of the persons elected as rural district councillors for the district, shall retire in each year, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire.

Guardians and rural district councillors will retire by thirds unless an order is made for their simultaneous retirement under section 20, sub-section (6), *ante*, p. 717. As each parish, ward, or group of united parishes will not have three guardians or councillors, but some may have more and others less than that number, it is necessary to provide for the years in which the guardians or councillors of each parish will retire. Thus, in a parish having only one guardian, the election of a guardian can take place only once in three years, though in a parish with three there may be one retirement every year.

(3.) Where a poor law union is situate in more than one county, the power under this section of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, shall be exercised by a joint committee of the councils of the counties concerned, but if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Section 60.

Provided that if any order under this sub-section is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, it shall be of no effect until confirmed by the Local Government Board.

Although the area of a poor law union may be altered under section 36, sub-section (6), *ante*, p. 734, the general scheme of the Act is to leave the area of the union untouched even when it extends into two counties. But in that case, it is necessary that the powers of fixing and altering the number of guardians and rural district councillors and of regulating the retirement of guardians and rural district councillors should be exercised by the county councils of both counties into which the union extends; hence the necessity of a joint committee to act for the entire union. It is to be observed that the power of dividing a parish into wards is not given to the joint committee; that power apparently rests with the council of the county in which the parish is situate.

The number of members appointed by each county council to serve on the joint committee will apparently be fixed by agreement.

The proviso gives in effect an appeal to the Local Government Board, at the instance of any county council concerned, or any committee specially authorised by them to consider the orders made by the joint committee and to appeal therefrom if necessary.

(4.) Where under any local and personal Act guardians of a poor law union are elected for districts, whether called by that name or not, the provisions of this Act with respect to the election of guardians shall apply as if each of the districts were a parish.

In a few unions and parishes guardians or as they are sometimes called governors of the poor are elected under local acts. Where the areas for which separate guardians are elected are not parishes, they are to be deemed parishes so that the county council will have the same powers for the purposes of the election of guardians for such areas as if they were parishes.

* * * * *

61. No parish meeting or meeting of a parish council, or of a district council, or of a board of guardians shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost. Place of meeting of parish or district council or board of guardians.

62. (1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority. Permissive transfer to urban district council of powers of other authorities.

As to the adoptive Acts, see the note to section 53, sub-section (1), *ante*, p. 749.

The present provision refers only to a case where one of those Acts has been

**Note to
Section 62.**

adopted in an urban district or part of an urban district before the appointed day. The transfer is to be effected by the passing of a resolution by the urban district council. It is submitted that upon such a transfer being effected the burden of the expenses incurred in the execution of the adoptive Act, and the benefit of the property and income applicable to or arising out of its execution will remain the burden and the benefit of the area under the adoptive Act, and will not be thrown upon or enjoyed by the parts of the urban districts which have not adopted the Act. See note to section 53, sub-section (3), *ante*, p. 750, and section 67, *post*.

(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

Provisions as
to county
council
acquiring
powers of dis-
trict council.

63. (1.) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect :—

- (a.) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board :
- (b.) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses :
- (c.) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers :
- (d.) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council :
- (e.) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers :
- (f.) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

This sub-section will apply where a county council has resolved upon the complaint of a parish council of the default of a district council that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council (section 16, and section 26, sub-section (4), *ante*, pp. 713, 726).

As to the manner in which the expenses of a rural district council are to be defrayed, see section 29, and notes, *ante*, p. 728. It would seem that the proviso to that section will apply to the expenses to which the present sub-section relates. It will be remembered that a complaint of a parish council may relate to a default of a district council in the exercise of their powers as highway authority.

As to the borrowing powers of a rural district council, see notes to section 68, sub-section (4), *post*.

Clause (f) enables the county council to hand over any property acquired for the purposes of the exercise of the powers of the district council by the county council, and to put the district council in the same position as regards powers, duties, debts, and liabilities relating to the subject matter of the complaint, as if the powers of the district council had been exercised by that council in the first instance, and no complaint had been made.

**Note to
Section 63.**

(2.) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed the members who are actually appointed shall act as the joint committee.

Where a complaint is referred to a joint committee of county councils under this sub-section, it appears that that joint committee will have power to determine whether or not any action is to be taken in the matter of the complaint, and whether if action is to be taken it is to be taken by the method of taking over the powers of the defaulting district council, or by the method of compelling that council to perform the duty in respect of which the complaint is made, see note to section 16, *ante*, p. 713.

The body to take action in either of these ways will be, it is submitted, the joint committee of the county councils, and not the county council to whom the complaint was originally made.

64. A county council may employ a district council as their agents in the transaction of any administrative business on matters arising in, or affecting the interests of, its own district. Power to act through district council.

This section may relate to most of the administrative business referred to by that description in section 3 of the Local Government Act, 1888.

65. Where any improvement commission affected by this Act have any powers, duties, property, debts, or liabilities in respect of any harbour, the improvement commission shall continue to exist and be elected for the purpose thereof, and shall continue as a separate body, as if this Act had not passed, and the property, debts, and liabilities shall be apportioned between the district council for the district and the commission so continuing and the adjustment arising out of the apportionment shall be determined in manner provided by this Act. Saving for harbour powers.

This section will apply where the commissioners under an improvement Act have powers, &c., in respect of a harbour. The commissioners will be elected as heretofore, and will continue to have the same powers as to the harbour. The property, debts, and liabilities of the improvement commissioners will be apportioned between the district council and the commissioners for harbour purposes, or an adjustment will be made according to section 68, *post*.

* * * * *

67. Where any powers and duties are transferred by this Act from one authority to another authority— Transfer of property and debts and liabilities.

(1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same ; and

(2.) The latter authority shall hold the same for the estate, interest,

Section 67.

and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act ; and

- (3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

The following are instances of cases in which the above provisions will apply :—

Transfer of powers, &c., of authority under the adoptive Acts to urban district council (section 62).

Transfer to rural district council of powers, &c., of rural sanitary authority and highway authority (section 25).

Transfer to district councils of powers of justices out of sessions and of quarter sessions (sections 27 and 32).

The definition of “liabilities” in section 100 of the Local Government Act, 1888, which is incorporated with this Act by section 75, *post*, should be referred to. It has already been set out, *ante*, p. 528.

Adjustment
of property
and liabilities.

68. (1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement.

In some cases an adjustment under this Act is specially provided for. See, for example, section 54, sub-section (1) (c), *ante*, p. 751. When there is no such special provision, an adjustment may be necessary under this section. It is impossible to exhaust the cases in which such adjustment will be required, but there will, in general, be an adjustment in all cases where the area of a district is changed. And there will generally be some adjustment in respect of compensation to existing officers.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board : Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

Property belonging to the undivided area may be retained by or transferred to one of the divisions. The other must make some return, as by taking the sole burden or a greater share of some liability, or by the payment of some capital or annual sum. Debts and liabilities may be adjusted in like manner.

The payment or remuneration of an officer may be a subject of adjustment if the officer remains in the service of both constituted authorities. And the compensation payable to an officer under section 81, sub-section (7), *post*, p. 768, may have to be adjusted in like manner.

The proviso only applies where one of the authorities is a board of guardians, and the agreement relates to the joint use of property.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided. Section 68.
52 & 53 Vict.
c. 49.

The award will be by a single arbitrator appointed by agreement or by order of the court in case of difference. The terms of the submission, unless altered by agreement, will be those mentioned in the First Schedule to the Act of 1889, with the additional power as to costs mentioned in the text. The Arbitration Act, 1889, is set out in the Appendix, *post*.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses(a) of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.(b)

(a) See the notes to section 29, *ante*, p. 728.

(b) Urban and rural district councils may borrow in manner provided by the Public Health Act, 1875, s. 233, *ante*, p. 314, and following sections. In the case of a rural district council the security for the loan is the rate for general expenses, and in the case of special expenses the rates of the particular parish or parishes upon which the expenses are chargeable.

No consent will be required for the loan, but the period of repayment will be fixed by the Local Government Board.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

The effect of this provision is to prevent the application of the sums in question in aid of current rates. Such sums may be applied in repayment of debt or for any other purpose for which money might be borrowed.

69. Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council, desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing in this section shall empower a county council or joint committee to alter the boundaries of a county. Power to deal with matters arising out of alteration of boundaries.

Section 59 of the Local Government Act, 1888, is set out *ante*, p. 519.

The alteration of the boundaries of a county can be effected only by means of a provisional order of the Local Government Board under section 54 of the Local Government Act, 1888, *ante*, p. 516. A county council may apply to the Board for such an order (section 36, sub-section (5), *ante*, p. 734).

Section 70.

Summary
proceeding for
determination
of questions as
to transfer of
powers.

70. (1.) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

This provision resembles that in section 29 of the Local Government Act, 1888, *ante*, p. 507, under which many questions have been decided. Rules under the above section came into operation on the 1st of October, 1894. They provide that the summary proceeding for submitting any question under this section for the decision of the High Court shall be by special case to be agreed upon by the parties, or in default of such agreement to be settled by an arbitrator to be agreed on by the parties or appointed by a judge in chambers, or to be settled by a judge in chambers. The special case, when settled, is to be filed in the Crown Office within eight days, and to be put into the Crown Paper for argument. See the "Annual Practice," 1895, vol. ii., p. 375.

Under the corresponding section of the Act of 1888 it was held that the Court would not answer abstract questions on the construction of the Act. See *Ex parte Cardigan C. C.*, 54 J. P. 792.

(2.) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

Under the Charitable Trusts Acts, 1860, s. 8, and 1869, ss. 10, 11, the Attorney-General or any person authorised by him or by the Commissioners may present a petition to the Chancery Division of the High Court in a summary way appealing from certain orders of the Commissioners. The conditions of appeal which are there prescribed, and which will apply to appeals under this section, are the following:— (1.) The petition must be presented within three months after the definitive publication of the order; and "definitive publication" has been held to mean "the final publication when the time expired for the receipt of suggestions and objections" (*Re Hackney Charities*, 12 W. R. 1131). (2.) Twenty-one days' written notice of the intention to appeal must be given to the Charity Commissioners, and to the Attorney-General. (3.) The court may deal with the costs, and may require security for costs to be given by an appellant other than the Attorney-General. The persons who may appeal, and the orders with respect to which an appeal will lie under this section, are clearly pointed out in the text.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

Under the corresponding provision in section 29 of the Local Government Act, 1888, there is no appeal to the Court of Appeal. See *Ex parte Kent County Council* [1891], 1 Q. B. 725; 61 L. J. Q. B. 435.

The text gives such an appeal, but only with the leave either of the High Court or of the Court of Appeal.

Note to Section 70.

71. A copy of every order made by a county council or joint committee in pursuance of this Act shall be sent to the Local Government Board, and, if it alters any local area or name, also to the Board of Agriculture. Supplemental provisions as to county council orders.

As to orders by a joint committee of county councils, see section 36, sub-sections (1) and (11), *ante*, p. 733.

As to orders altering local names, see section 55, *ante*, p. 752.

72. (1.) The expenses incurred by the Local Government Board in respect of inquiries or other proceedings under this Act shall be paid by such authorities and persons and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by any authority or person shall be a debt from that authority or person to the Crown. Provisions as to local inquiries.

Compare the provisions of section 294 of the Public Health Act, 1875, *ante*, p. 389. The provision as to the costs being a debt due to the Crown is new.

(2.) Such expenses may include the salary of any inspector or officer of the Board engaged in the inquiry or proceeding, not exceeding three guineas a day.

(3.) The Local Government Board and their inspectors shall have for the purposes of an inquiry in pursuance of this Act the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875.

See the Public Health Act, 1875, s. 296, *ante*, p. 390, and the notes thereto.

(4.) Where a county council hold a local inquiry under this Act or under the Local Government Act, 1888, on the application of the council of a parish or district, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) shall be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting; but, save as aforesaid, the expenses of the county council incurred in the case of inquiries under this Act shall be paid out of the county fund.

Sub-section (1) applies to all inquiries by the Local Government Board under this Act. This sub-section applies only to local inquiries held by a county council on the application of a parish or district council or inhabitants.

The expenses of all inquiries by county councils under this Act other than those mentioned in this section will fall on the county fund.

See also as to the costs of inquiries by a county council with reference to the compulsory acquisition of land, section 9, sub-section (12), and notes, *ante*, p. 708.

73. When the day on which any thing is required by or in pursuance of this Act to be done is Sunday, Christmas Day, or Good Friday, or a Bank Holiday, that thing shall be done on the next following day, not being one of the days above mentioned. Provision as to Sundays and bank holidays.

It will be noticed that this provision is not permissive merely.

Section 74.

Provisions
as to Scilly
Islands.
51 & 52 Vict.
c. 41.

74. This Act shall be deemed to be an Act touching local government within the meaning of section forty-nine of the Local Government Act, 1888, and a provisional order for the Scilly Islands may, on the application of the council of the Isles of Scilly, and after such public notice as appears to the Local Government Board sufficient for giving information to all persons interested, be made accordingly.

Section 49, sub-section (1), of the Act of 1888, provides as follows :—

“It shall be lawful for the Local Government Board to make a provisional order for regulating the application of this Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils, and also of authorities under the Acts relating to highways and the Public Health Act, 1875, and the Acts amending the same, and for the application to the islands of any provisions of any Act touching local government, and any such order may provide for the establishment of councils, and other local authorities separate from those in the county of Cornwall, and for the contribution by the Scilly Islands to the county council of Cornwall, in respect of costs incurred by the county council for matters specified in the said order as benefiting the Scilly Islands, and such order may also provide for all matters which appear to the Local Government Board necessary or proper for carrying the order into full effect.” A provisional order establishing a separate council for the Scilly Islands, and conferring thereon the powers of a county council and of a highway and sanitary authority, was made under this section, and confirmed by 53 & 54 Vict. c. clxxvi.

Construction
of Act.
51 & 52 Vict.
c. 41.

75. (1.) The definition of “parish” in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

In the section referred to, it is enacted that in that Act “parish” means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within and part of it without any county, borough, urban sanitary district, or other area means each such part.” The application of this definition being expressly excluded, the definition of “parish” in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), applies, whereby (section 5) “parish” is defined to mean, “as respects England and Wales, a place for which a separate poor rate is or can be made, or for which an overseer is or can be appointed.” The part of the definition in the Act of 1888 which relates to parts of parishes would obviously be inapplicable to the present Act, having regard to its provisions as to parishes situate partly within and partly without a larger area.

For expressions which are defined by the Act of 1888, and will have the same meaning when used in this Act, see the Act of 1888, s. 100, *ante*, p. 526. Such expressions will bear the meaning given to them by the earlier Act, “unless the context otherwise requires.” It may be mentioned that the definition of “county” in the Act of 1888, is varied (*infra*, sub-section (2)), so as to include a “county borough,” and that the definition of “district council” and “county district” in the Act of 1888, definitions which had reference to future legislation which might establish district councils, must now be read as referring to the district councils, which are established by this Act, and to the districts of such councils. See section 21, *ante*, p. 718.

(2.) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression “parochial elector,” when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

As to “parochial electors,” see section 44, sub-section (1), and notes, *ante*, p. 737.

As to parochial electors in urban districts, the county of London and county boroughs, see sections 23, 30, and 31, *ante*, pp. 719, 730.

The expression "election" includes both the nomination and the poll. **Section 75.**

The rules as to elections framed by the Local Government Board under section 23, sub-section (6), section 20, sub-section (5), and section 3, sub-section (5), accordingly regulate the proceedings preliminary to the actual poll, including the nomination; the definition is not intended to be exhaustive, the word "includes" and not "means" being used. *Reg. v. Kershaw*, 6 E. & B. 1007; 26 L. J. M. C. 23; 20 J. P. 741.

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

This definition has especial reference to section 14, *ante*, p. 711. Persons acting as trustees, although not trustees in the strict legal sense, are to be included in the term.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes:—

- (a.) For any spiritual purpose which is a legal purpose: or
- (b.) For the benefit of any spiritual person or ecclesiastical officer as such; or
- (c.) For use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or
- (d.) For the maintenance, repair, or improvement of any such building as aforesaid; or for the maintenance of Divine service therein; or
- (e.) Otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression "vestry" in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

The expression "rateable value" means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough.

Section 75.33 & 34 Vict.
c. 75.

The expression "elementary school" means an elementary school within the meaning of the Elementary Education Act, 1870.

The expression "local and personal Act" includes a Provisional Order confirmed by an Act and the Act confirming the Order.

Reference may be made to *Reg. v. London County Council* [1893], 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. (N.S.) 440, 580; 42 W. R. 1; 58 J. P. 21; 9 T. L. R. 601, as to what is a local and personal Act.

The expression "prescribed" means prescribed by order of the Local Government Board.

Extent of Act. **76.** This Act shall not extend to Scotland or Ireland.

Short title. **77.** This Act may be cited as the Local Government Act, 1894.

PART V.

TRANSITORY PROVISIONS.

* * * * *

First elections
of guardians
and district
councils.

79. (1.) The existing boards of guardians and urban and rural sanitary authorities shall take the necessary measures for the conduct of the first elections of guardians and district councillors respectively under this Act, including any appointment of returning officers required by rules under this Act.

(2.) Where a parish is divided by this Act into two or more new parishes, then, subject to any order made by the county council, there shall be one guardian, and if it is in a rural district, one district councillor for each of such new parishes.

(3.) Of the guardians and urban and rural district councillors first elected under this Act, save as hereinafter mentioned, one-third as nearly as may be shall continue in office until the fifteenth day of April, one thousand eight hundred and ninety-six, and shall then retire; and one-third as nearly as may be shall continue in office until the fifteenth day of April, one thousand eight hundred and ninety-seven, and shall then retire; and the remainder shall continue in office until the fifteenth day of April, one thousand eight hundred and ninety-eight, and shall then retire.

(4.) The guardians and rural district councillors to retire respectively on the fifteenth day of April, one thousand eight hundred and ninety-six, and on the fifteenth day of April, one thousand eight hundred and ninety-seven, shall be the guardians and rural district councillors for such parishes, wards, or other areas, as may be determined by the county council for the purpose of the rotation.

(5.) Where guardians or rural district councillors retire together at the end of the triennial period, the guardians and district councillors first elected under this Act shall retire on the fifteenth day of April, one thousand eight hundred and ninety-eight.

As to the simultaneous retirement of guardians, &c., see sections 20, sub-section (6), and 24, sub-section (4), *ante*, pp. 717, 721.

(6.) Of the first urban district councillors elected under this Act, the third who are respectively to retire on the fifteenth day of April,

one thousand eight hundred and ninety-six, and one thousand eight hundred and ninety-seven, shall be determined according to their place on the poll at the election, those that were lowest on the poll retiring first. If there was no poll, or if a question arises in consequence of an equality of votes between two or more councillors, the matter shall be determined by ballot conducted under the direction of the council. Section 79.

(7.) In the case of an urban district divided into wards, the foregoing provisions with respect to retirement shall apply separately to each ward.

(8.) Upon the day on which the first guardians and urban or rural district councillors elected under this Act come into office, the persons who are then members of boards of guardians, and urban and rural sanitary authorities, shall cease to hold office, but until that day the persons who are at the passing of this Act guardians and members of urban sanitary authorities (for urban districts not being boroughs) and of highway boards shall continue in office notwithstanding any want of qualification, as if the term of office for which they were elected expired on that day, and, except for the purpose of filling casual vacancies or electing additional guardians, no further elections shall be held.

(9.) The first meeting of each district council elected under this Act shall be convened by the returning officer.

(10.) The foregoing provisions shall apply to the existing members and first members elected under this Act of the local board of Woolwich and of any vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same, and to the existing and first auditors elected under those Acts in like manner as if they were members of urban sanitary authorities or urban district councillors, as the case may require, except that the date of the annual election shall be substituted for the fifteenth day of April.

(11.) The overseers of any parish divided by this Act shall, until the first appointment of overseers next after the appointed day, continue in office as if they were overseers of each part of the said parish, which by reason of such division becomes a separate parish.

80. (1.) If any difficulty arises with respect to the holding of the first parish meeting of a rural parish, or to the first election of parish or district councillors, or of guardians, or of members of the local board of Woolwich, or any vestry in the county of London, or of auditors in the county of London, or to the first meeting of a parish or district council, or board of guardians, or such local board or vestry as aforesaid, or if, from no election being held, or an election being defective or otherwise, the first parish or district council, or board of guardians, or local board or vestry has not been properly constituted, or there are no auditors under the Metropolis Management Acts, 1855 to 1890, or an insufficient number, properly elected, the county council may by order make any appointment or do any thing which appears to them necessary or expedient for the proper holding of any such first meeting or election and properly constituting the parish or district council, board of guardians, local board, or vestry, or auditors, and may, if it appears to them necessary, direct the holding of a meeting or election, and fix the dates for any such meeting or election, but a parish shall, notwithstanding any such failure to constitute the parish council, be deemed to be a parish having a parish council within the meaning of this Act. Any such

Power of
county council
to remove
difficulties.

Section 80. order may modify the provisions of this Act, and the enactments applied by or rules framed under this Act so far as may appear to the county council necessary or expedient for carrying the order into effect.

(2.) The Local Government Board shall make regulations for expediting and simplifying the procedure under section fifty-seven of the Local Government Act, 1888, in all cases in the year one thousand eight hundred and ninety-four, for the purpose of bringing this Act into immediate operation, and such regulations may dispense with the final approval of an order by the county council in cases where the prescribed notice of the proposed order has been given before it is made by the county council.

Existing
officers.

81. (1.) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body.

As an illustration of this sub-section, the officers of highway boards will become officers of the rural district council when the latter become the highway authority under section 25 ; but, of course, their duties will be limited to those connected with the work of the council as the highway authority.

In a highway parish the body appointing a surveyor are the inhabitants in vestry, or meeting in the nature of a vestry (5 & 6 Will. 4, c. 50, ss. 6, 18).

* * * * *

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

Sub-sections (2) and (3) relate to vestry clerks and assistant overseers.

Compare the corresponding provision in the Local Government Act, 1888, s. 120, set out in the note to sub-section (7), *infra*.

(5.) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided shall hold his office as such officer for each parish or district formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this

section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected. Section 81.

An officer means a person holding any place, situation, or employment ; “existing” means existing at the appointed day. See Local Government Act, 1888, s. 100, *ante*, p. 529, and section 75, sub-section (1), of this Act, *ante*, p. 764.

Section 120 of the Local Government Act, 1888, which is here applied, provides as follows :—

- “(1.) Every existing officer declared by this Act to be entitled to compensation and every other existing officer whether before mentioned in this Act or not, who by virtue of this Act or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council to whom the powers of the authority whose officer he was are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty’s Civil Service, is paid to a person on abolition of office.
- “(2.) Every person who is entitled to compensation as above-mentioned shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office in every year during the period of five years next before the passing of this Act on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declarations Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.
- “(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any) and shall forthwith inform the claimant of their decision.
- “(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may within three months after the decision of the council appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so what amount ought to be granted to the claimant and such determination shall be final.
- “(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath which any justice present may administer all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.
- “(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.
- “(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act or anything done in pursuance of or in consequence of this Act receives any increase of emoluments of the office held by him, he shall not while receiving the emoluments of that office receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the

**Note to
Section 81.**

emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted his compensation shall be suspended while he holds such office.

“(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund as a payment for general county purposes.”

It will be observed that, under the section above set out, in fixing the amount of compensation regard must be had to the following considerations :—

1. The direct pecuniary loss which the officer suffers.
2. The conditions of his appointment, *e.g.*, whether it is for life or for a fixed term, or at pleasure. On this subject reference may be made to *R. v. Norwich (Mayor, &c., of)*, 8 A. & E. 633, as showing that, although an office may be held during pleasure, the authority assessing compensation is not bound to consider only the legal tenure, but may, under certain circumstances, award compensation as for an office held for life.
3. The nature of his office, *i.e.*, whether it is an important or subordinate one. And see *Legg v. Stoke Newington Vestry*, *ante*, p. 529.
4. The duration of his service.
5. Any additional emoluments which he acquires under the Act which alters his position by the abolition of his office or diminution of his salary.
6. Any emoluments which he might have acquired if he had not refused to accept a new office.
7. All the other circumstances of the case.

The Civil Service scale is regulated by the Superannuation Acts, 1859 (22 Vict. c. 26) and 1884 (47 & 48 Vict. c. 57). The compensation allowance is not to exceed two-thirds of the salary and emoluments of the office ; subject to this ten-sixtieths of the salary and emoluments may be allowed to a person who has served ten years or upwards and an addition of one-sixtieth may be made for every year over ten up to forty years. In case of abolition of office an additional allowance not exceeding the ten-sixtieths of his salary and emoluments may be granted.

It should be noticed also that a claimant for compensation must deliver his claim to the particular body to whom the powers of the authority whose officer he was are transferred, and his claim must state the matters and be accompanied by the statutory declaration mentioned in sub-section (2) of the section above set out ; he may be required to attend before the body in question and be examined on oath as to his claim if a justice is present to administer an oath ; if dissatisfied with the decision of that body, he may appeal to the Commissioners of the Treasury.

The proviso to the sub-section in the text varies the provision above set out of the Act of 1888 as to the fund out of which payment of compensation is to be made ; such payments are to be paid in the case of district councils as general expenses (as to which see note to section 29, *ante*, p. 728).

**Provision as
to highways.**

82. (1.) Where before the appointed day the highway expenses were charged on a particular parish or other area and not on a district, the district council may determine that the highways in that parish or area shall be placed in proper repair before the expenses of repairing the same become a charge upon the district, and, failing such highways being placed in proper repair to the satisfaction of the district council, the district council may themselves place the highways in proper repair, and the expense incurred by them of placing those highways in proper repair shall be a separate charge on the parish or area, and any question which arises as to whether any such expenses are properly a separate charge on the parish or area shall be determined by the county council.

This provision enables a district council to require that the highways which, before the appointed day, were repairable at the expense of a parish or other area not co-extensive with the district, shall be placed in proper repair at the expense of such parish or area before being taken over by the district council as highway authority, under section 25, *ante*, p. 723.

As to the meaning of the expression “appointed day” where the operation of section 25 as to highways is postponed, see the proviso to section 84, sub-section (4), *post*.

(2.) Where in pursuance of an order of a county council a parish continues to maintain its own highways after the appointed day, the highway expenses shall not be deemed to be expenses of the parish council or of the parish meeting within the meaning of this Act. Section 82.

So long as a highway parish remains such (by virtue of an order for the postponement of the operation of section 25) the highway rate will continue to be assessed and levied by the surveyor of highways as before the passing of this Act.

83. It shall be the duty of every county council to exercise all such of their powers as may be requisite for bringing this Act into full operation within their county as soon as may be after the passing thereof, and a county council may delegate their powers under this Act to a committee. Duty of county council to bring Act into operation.

See further as to the duty of county councils to use their powers under this Act with expedition, sections 36, sub-section (13); 80 and 84, sub-section (3).

84. (1.) The first elections under this Act shall be held on the eighth day of November next after the passing of this Act, or such later date or dates in the year one thousand eight hundred and ninety-four as the Local Government Board may fix. Appointed day.

The rules as to first elections made by the Local Government Board fixed the dates for the first elections.

(2.) The persons elected shall come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of the rules made under this Act in relation to their election.

The rules referred to were those framed by the Local Government Board, under sections 3, sub-section (6); 20, sub-section (5); and 23, sub-section (5). They provided in each case for the date when the persons elected shall come into office.

(3.) Every division into wards or alteration of the boundaries of any parish or union or district which is to affect the first election shall, if it affects the parishes or parts for which the registers of parochial electors will be made, be made so far as practicable before the first day of July next after the passing of this Act, and any such division or alteration which after the appointed day may be made an application by the parish council or any parochial electors of any parish, may be made before the appointed day on application by the vestry or a like number of the ratepayers of the parish.

Provided that—

(a.) If any county council having any such division or alteration under consideration so direct, the lists of voters shall be framed in parts corresponding with such division or alteration so that the parts may serve either for the unaltered parish, union, or district, or for the same when divided or altered; and

(b.) If the county council making such division or alteration on or after the said day and on or before the last day of August, one thousand eight hundred and ninety-four, so direct, the clerk of the county council shall make such adjustment of the registers of parochial electors as the division or alteration may render necessary for enabling every parochial elector to vote at the

Section 84.

first election in the ward, union, or district in which his qualification is situate, and in that case the said division or alteration shall be observed in the case of that election.

The foregoing provision had reference to proceedings before the appointed day, and is now practically spent.

As to a division into wards for the election of guardians, see sections 20, sub-section (3); 60, sub-section (1), *ante*, pp. 716, 756. As to alteration of boundaries, see sections 36 to 38, *ante*, p. 733.

- (4.) Subject as in this Act mentioned, "the appointed day" shall,—
- (a.) For the purpose of elections and of parish meetings in parishes not having a parish council, be the day or respective days fixed for the first elections under this Act, or such prior day as may be necessary for the purpose of giving notices or doing other acts preliminary to such elections; and
- (b.) For the purpose of the powers, duties, and liabilities of councils or other bodies elected under this Act, or other matters not specifically mentioned, be the day on which the members of such councils or other bodies first elected under this Act come into office; and
- (c.) For the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act;

and the lists and registers of parochial electors shall be made out in such parts as may be necessary for the purpose of the first elections under this Act.

Provided that where an order of a county council postpones the operation of the section with respect to highways as respects their county or any part thereof the day on which such postponement ceases shall, as respects such county or part, be the appointed day, and the order of postponement shall make such provision as may be necessary for holding elections of highway boards during the interval before the appointed day.

The effect of the proviso to the above sub-section is to postpone the appointed day as regards highway powers where those powers are temporarily withheld from a district council by an order for postponement, under section 25, *ante*, p. 723.

Current rates,
&c.

85. (1.) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be *ante*, p. 723.

manner as may appear necessary or proper in order to bring it into Section 85. conformity with the provisions of this Act.

(4.) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public, general, or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

As to the change of name of urban sanitary authorities, see section 21 (1), *ante*, p. 717.

86. (1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require. Saving for existing securities and discharge of debts.

(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

87. All such bye-laws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly. Saving for existing bye-laws.

88. (1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting, as successors of the said authority in like manner as if this Act had not been passed. Saving for pending contracts, &c.

(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

89. The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of Repeal.

Section 89. that schedule mentioned, and so much of any Act, whether public, general, or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act.

This Act does not give power to a county council to create wards or fix the number of councillors in an urban district, but the meaning of the proviso in the text seems to be that where these matters are provided for by or in pursuance of a local and personal Act the county council shall have the same power of altering them from time to time as that body has in the case of rural districts. See section 60, subsection (1), *ante*, p. 756.

SCHEDULES.

FIRST SCHEDULE.

RULES AS TO PARISH MEETINGS, PARISH COUNCILS, AND COMMITTEES.

* * * * *

PART THREE.

General.

* * * * *

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

It must be noticed that in order to make the minute evidence it must be signed at the meeting to the proceedings of which it relates, or at the next meeting of the same body. The date at which the minute is signed should appear upon the minute. As to the appointment of committees, see sections 56 and 57, *ante*, p. 752.

(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

It will, of course, be competent for any party seeking to upset the proceedings of the meeting to tender evidence to show that the meeting was not duly convened, or that any of the members were not duly qualified, or that the committee was duly constituted, or was acting *ultra vires*.

* * * * *

PART FOUR.

Section 56.

Proceedings of Committees of Parish or District Councils.

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

It appears from Part 3, Rules (2) and (3), above, that every committee must keep minutes of their proceedings.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, **Schedule 1.** whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

A committee have, of course, no power to fix their area of authority or in any way to alter the powers which have been delegated to them.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
54 Geo. 3, c. 91 - -	An Act to amend so much of an Act passed in the forty-third year of Her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.	The whole Act, so far as it relates to rural parishes.
58 Geo. 3, c. 69 - -	The Vestries Act, 1818 -	Sections one, two, three, and four so far as they relate to parish meetings and parish councils under this Act.
59 Geo. 3, c. 85 - -	The Vestries Act, 1819 -	The whole Act so far as it relates to parish meetings under this Act.
1 & 2 Will. 4, c. 60 - -	The Vestries Act, 1831 -	The whole Act so far as it relates to parish meetings under this Act, except section thirty-nine.
4 & 5 Will. 4, c. 76 - -	The Poor Law Amendment Act, 1834.	In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively;" and from "and also fix a qualification" to "for the ensuing year shall be chosen;" and from "and every justice of the peace" to "as such elected guardians;" and from "Provided also" to the end of the section. Section thirty-nine, from "and every justice" to the end of the section. In section forty, the words "In all cases of the election of guardians under this Act, or." Section forty-one. Section forty-eight from "Provided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.

Schedule 2.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Will. 4, c. 50 -	The Highway Act, 1835 -	In section forty-eight, the words "with the consent in writing of the justices of the peace at a special sessions for the highways" and the words "at and for such price as the said justices may deem fair and reasonable."
7 Will. 4, & 1 Vict. c. 45 -	The Parish Notices Act, 1837.	Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.
5 & 6 Vict. c. 57 -	The Poor Law Amendment Act, 1842.	Section eight, section eleven, from "and in every case," to the end of the section, and section fifteen.
7 & 8 Vict. c. 101 -	The Poor Law Amendment Act, 1844.	Sections seventeen, twenty, and twenty-four, and section sixty-one from "and wherever any such collector" to "provisions of this Act."
13 & 14 Vict. c. 57 -	The Vestries Act, 1850 -	Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.
14 & 15 Vict. c. 105 -	The Poor Law Amendment Act, 1851.	Section two and section three.
16 & 17 Vict. c. 65 -	The Vestries Act, 1853 -	The whole Act, so far as it relates to parish meetings under this Act.
18 & 19 Vict. c. 120 -	The Metropolis Management Act, 1855.	Section six. Sections thirteen to twenty-seven. In section thirty the words "or custom." Section fifty four. In section two hundred and thirty-five the words "under this Act," where they secondly occur.
19 & 20 Vict. c. 112 -	The Metropolis Management Amendment Act, 1856.	Sections six, seven, and eight.
23 & 24 Vict. c. 30 -	The Public Improvements Act, 1860.	In section four the words "in value."
25 & 26 Vict. c. 102 -	The Metropolis Management Amendment Act, 1862.	Section thirty-six; and section forty from "by rating" to "of such parish."
25 & 26 Vict. c. 103 -	The Union Assessment Act, 1862.	In section two the words "consisting partly of <i>ex officio</i> and partly of elected guardians," and from "Provided always" to the end of the section. In section five the words " <i>ex officio</i> or elected," in both places where they occur, and the words "as the case may be."
30 & 31 Vict. c. 6 -	The Metropolitan Poor Act, 1867.	Section seventy-nine.

Schedule 2.

Session and Chapter.	Short Title.	Extent of Repeal.
30 & 31 Vict. c. 106 -	The Poor Law Amendment Act, 1867.	Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.
31 & 32 Vict. c. 122 -	The Poor Law Amendment Act, 1868.	Section four from "and the powers" to the end of the section.
38 & 39 Vict. c. 55 -	The Public Health Act, 1875.	Section eight from "and the number" to the end of the section. In section nine from "Provided that (1) An <i>ex officio</i> guardian" to "situated in an urban district" (being the provisoes); and the words "from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for a union," and from "Subject to the provisions of this Act" to the end of the section. Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve. So much of Schedule I. as relates to committees, and Schedule II.
39 & 40 Vict. c. 61 -	The Divided Parishes and Poor Law Amendment Act, 1876.	Section six from "The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to "no alteration," except as to cases where a parish is dealt with by order of the Local Government Board.
39 & 40 Vict. c. 79 -	The Elementary Education Act, 1876.	In section seven the words "so however that in the case of a committee appointed by guardians one-third at least shall consist of <i>ex officio</i> guardians, if there are any and sufficient <i>ex officio</i> guardians."
47 & 48 Vict. c. 70 -	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	Section thirty-six from "(h.) The Local Government Board" to "validity of any vote."
48 & 49 Vict. c. 53 -	The Public Health (Members and Officers) Act, 1885.	Sections three and four.
55 & 56 Vict. c. 53 -	The Public Libraries Act, 1892.	Sub-section three of section one. The First Schedule so far as it applies to rural parishes.

THE LOCAL GOVERNMENT (STOCK TRANSFER) ACT, 1895.

(58 & 59 VICT. CAP. 32.)

An Act to amend the Local Government Act, 1894, so far as regards the Transfer of any Stock, Share, or Security standing in the name of, or Dividends payable to, a Local Authority. [6th July, 1895.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Section 1.

Alteration of
name on
transfer of
stock standing
in the name
of local
authority.
56 & 57 Vict.
c. 73.
51 & 52 Vict.
c. 41.

1. (1.) Where any stock is standing in the books of any company in the name of any local authority the following provisions shall have effect :—

(a.) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, the name of the local authority is changed, (a) then, upon the request of such authority and the production of a statutory declaration by the clerk of the authority specifying the stock, and verifying the change of name and identity of the authority, the company shall enter such stock in the new name of the local authority in like manner as if the stock had been transferred to the authority under that name, and pay to that authority, all dividends accrued and to accrue due thereon :

(b.) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, any other local authority becomes entitled to the stock or any dividends thereon, (b) a certificate of the clerk of the county council, or the order or award under which the local authority becomes so entitled, shall be a sufficient authority to the company to transfer the stock into the name of the local authority specified in that behalf in the order, award, or certificate, and to pay the dividends to such authority :

(c.) If in any other case any other local authority is entitled to the stock or any dividends thereon, the court may on application make an order vesting in such authority or person as the court may direct, the right to transfer the said stock, or pay such dividends, to the authority in or to whom the same ought to be vested or paid, and the Trustee Act, 1893, shall apply in like manner as if the vesting order were made under section thirty-five of that Act. (c)

(2.) In this Act—

“A local authority” includes any urban or rural sanitary authority, council of a borough, improvement commissioners, local board, urban district council, rural district council, board of guardians, highway board, burial board, parish council, overseers, churchwardens and overseers, and chairman of a parish meeting and overseers :

“County council” includes the council of a county borough :

“Order of a county council” means an order made either by a county

56 & 57 Vict.
c. 53.

council or by any joint committee of county councils, and, if such order requires confirmation by the Local Government Board, means the order as confirmed by that Board: Section 1.

“Company” includes the Bank of England, and any company or person keeping books in which any stock is registered:

“Stock” includes any share, annuity, or other security.

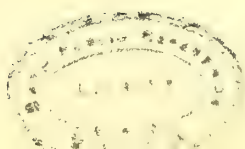
(3.) The jurisdiction of the court under this Act may be exercised by the High Court, or in cases within the jurisdiction of a palatine court or county court, by that court.

(a) It may be necessary to change the name of a local authority when an order is made for its alteration under sections 54 or 57, of the Local Government Act, 1888, *ante*, p. 516, or when the name is changed under section 55 of the Local Government Act, 1894, *ante*, p. 752.

(b) This may happen when a district is divided or altered and an adjustment has been made.

(c) The effect of this is that the local authority may transfer the stock according to the order, and the company must obey the order according to its tenor, and after receiving written notice thereof, it will not be lawful for the company to transfer the stock or pay dividends otherwise than in accordance with the order.

2. This Act may be cited as the Local Government (Stock Transfer) Short title, Act, 1895.



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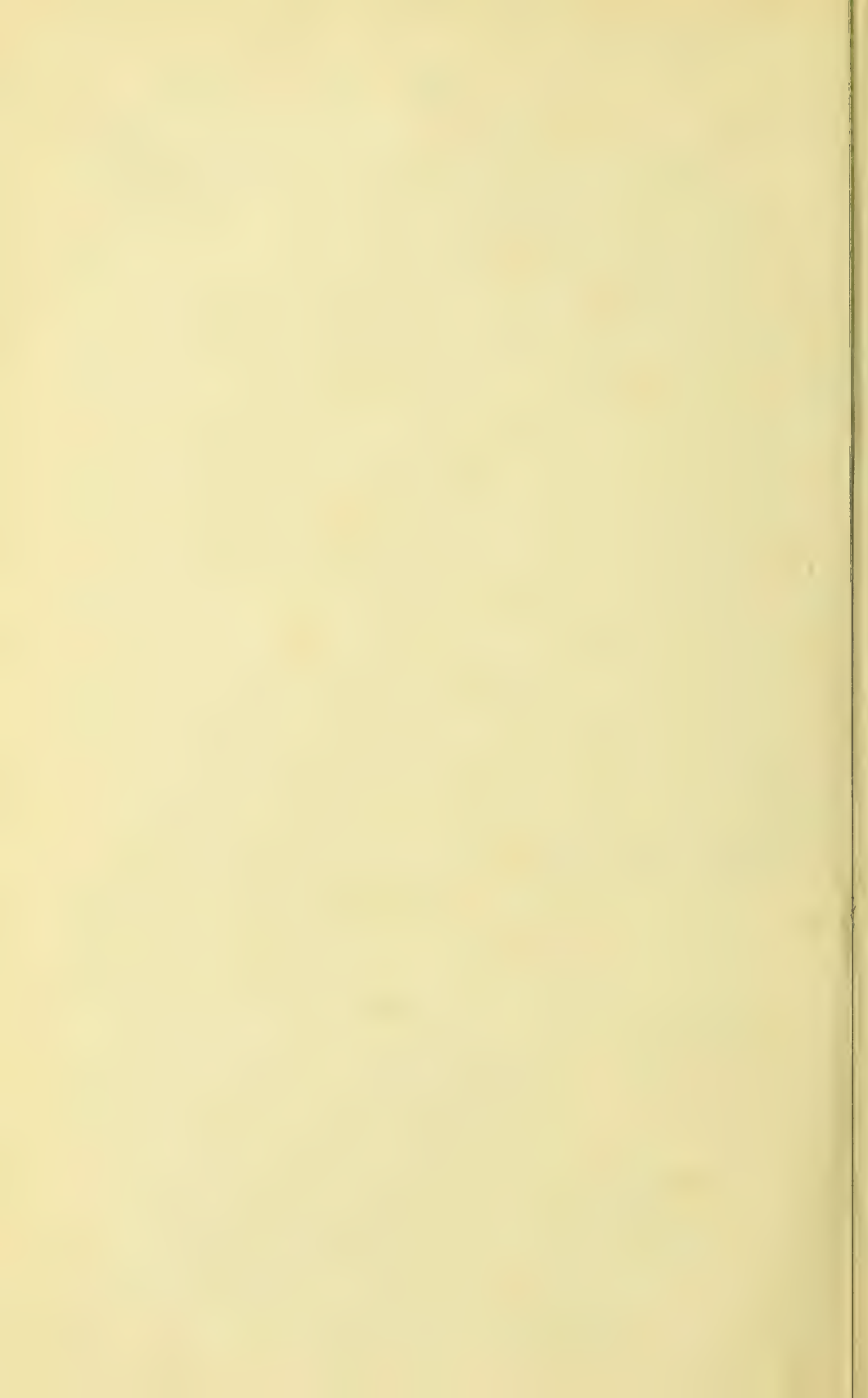
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